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AN
ESSAY
By
ON THE
LEGALITY
OF IMPRESSING
SEAMEN.

By W. Butler.



LONDON:

Printed for T. CADELL, Bookseller in the STRAND.

M DCC LXXVII.

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Printed for T. Cadell, Strand, by J. Johnson, St. Paul's Church-yard.

MDCCLXXVII

E S S A Y
ON THE
LEGALITY OF IMPRESSING
S E A M E N.

SECTION I.

Introduction.

WHOEVER considers the freedom of popular debate in this country, and the eagerness with which it occupies every topic of political investigation, cannot but be greatly surprised, that the subject of the following sheets has hitherto so little engaged the attention of the Public. To the Writer, it opens an enquiry, in which he has the widest field to display the extent of his researches, to make them useful to his country, and to recommend himself to public favour. To the Orator, it presents the choicest topics of popular declamation, and the fairest matter to offer to the understanding, or to engage the passions of his audience.

B

Little hitherto
written, or said,
on the subject
treated in these
sheets.

ence. The time and place to introduce it properly obtrude themselves, for ever, on the view. — By what fatality then has it happened, that it is difficult to mention any point of political enquiry which has so little employed either the speakers or the writers of this country ?

Reason of it's
being so much
overlooked.

Two causes may be assigned for this neglect. The difficulty of the subject, whichever side of the question we embrace, is not inconsiderable. However clear the argument for the legality of impressing seamen may appear, to the cool eye of the understanding, there is something in the mode in which it is carried on, at which an Englishman revolts. On the other side ; However our feelings may plead for the illegality of the procedure, and prejudice us against every argument offered in it's favour, yet their influence immediately abates, when one simple question is asked, *How would you otherwise man our fleet ?* — The other cause is equally obvious, “ It is (to use the words of the only writer against the legality of the impressing seamen, whom it has been my fortune to meet with, and who seems a very sturdy patriot) “ because “ the redress of their grievances unfortunately “ gives

“ gives our leading patriots no chance for
 “ ministerial elevation ; for, if it had, (says
 “ the Writer) these candidates for prefer-
 “ ment might have chosen a thesis to declaim
 “ upon, which would probably have been
 “ more grateful to the public, than their end-
 “ less harangues on Sir James Lowther’s
 “ grant ;” the favourite subject of public
 oratory at the time the pamphlet in question
 was published *.”

In the course of the last session of parlia-
 ment, the honourable Temple Luttrell moved
 for leave to bring in a bill for the more easy
 and effectual manning of the fleet. The ho-
 nourable gentleman prefaced his motion by a
 long speech, in which he stated at large the
 inconveniencies attending the present mode of
 manning the fleet, and supported his argu-
 ments by the concurrent testimonies of many
 gentlemen, chiefly of the naval profession.—
 He particularly instanced many hardships,
 and even cruelties, exercised on seamen by
 virtue, and in consequence, of press-warrants.

Inquired into in
 the last Session
 of Parliament.

Lord Mulgrave replied to him at large.
 His Lordship argued strongly in favour of the

† The Rights of the Sailors vindicated, page 4. *Kearfly*.

ON THE LEGALITY

measure. He asserted it was constitutional, expedient, and fully adequate to produce it's end. That it was attended with no more inconvenience than is necessarily incident to every human institution. He denied that it was productive of the hardships and cruelties attributed to it by Mr. Luttrell. The question was put, and on a division, the house divided, for the Ayes, 54 ; for the Noes, 108.

Since this, the honourable Gentleman who was the mover of the question, has favoured me with a long conversation on this subject, and was pleased to let me have the reading of an account of the debate, and his intended Bill, printed immediately under his inspection. He was also pleased to hear from me the heads of the following sheets. The difference in our sentiments was not so great as might have been expected. We agree in the main, and, indeed, the only point which these sheets were written to establish, *viz.* *that after every inducement is held out to the seaman, to make him enlist himself voluntarily into the service, there must be ultimately, some mode of compulsion, to produce the desired effect.*

SECTION

SECTION II.

The State of the Question.

THE Reader will please to consider, What the Question, before us, is; and to what it extends. — We do not pretend to consider any right which Government may claim, to press men into the Land-service; or it's right to press into the Sea-service, others than Seamen. — The sole object of the present enquiry is the right of the British Government to impress Seamen into the Sea-service. — The order in which we shall treat the question is as follows.

Manner of treating the subject.

Though we entirely agree with those who think slightly of the use of metaphysical inquiries on the nature and first principles of government; yet, on the present occasion, we cannot, by any proper means, entirely discard them. The objection most obvious to the minds of the generality of mankind, and most frequently used in conversation, is the extreme hardship which the measure in dispute brings on one particular set of men, exclusive of the other ranks of life. This inequality of condition appears, to many,

First Point.

many, so convincing an argument of the iniquity of the measure, which, they suppose, produces it, as to be, of itself, sufficient to preclude all farther reasoning. The fact, say they, is certain. You cannot deny that the impress necessarily involves one part of the state in a scene of extreme calamity and distress. While you and the greater part of the nation are allowed to pursue the ordinary occupations and amusements of life, a very numerous, and perhaps the most valuable part of the community, is exposed to be torn from their families and friends, and irretrievably fixed in a state of continual hardship and danger.

To meet this objection fully, it seemed necessary to resort to the origin, and to expose the causes, of the inequality complained of. We shall attempt to shew, that an inequality of rank is inseparable from society; that, in the distribution of the duties of society, those which are the offensive and disagreeable public duties, (among which we reckon personal service in the armies and navies of the state,) must fall to the lot of that part of mankind which fills the lower ranks of life; that this mode of distribution, howsoever
hard

hard or unjust it may appear to the human eye, is necessarily incident to society in all its states; and that it is, in some degree, corrected by government, though a necessary attendant on all governments.

In the subsequent section, the third of this little work, I shall attempt to shew, that the impress of seamen is a measure of necessity and expediency, justifiable on both, and on either, of these principles; and that, in the advanced state of government, which the British nation has reached, personal service neither is nor ought to be, nor can be, the duty of every citizen. I shall attempt to prove this by general reasoning, and to illustrate it by examples. Second Point.

In the fourth section, I shew, by the examples of some of the principal states mentioned in history, whose constitution approaches nearest to ours, that an impress is both expedient and necessary, to fill the armies and navies of our state. Third Point.

In the fifth and last section, I shall attempt to prove, that an impress of seamen is a part of the common law, and often recognised in the statute law of this realm. Fourth Point.

In

The subject of these sheets excellently discussed by Mr. Justice Foster.

In the year 1743, one Alexander Broadfoot was indicted for the murder of Cornelius Calahan, a sailor belonging to his Majesty's ship the Mortar-sloop. The cause came to be tried before Mr. Justice Foster, then serjeant and recorder of Bristol, afterwards deservedly advanced to be one of the Judges of the court of King's Bench. The case was, that the commander of the Mortar-sloop had a warrant directed from the Lords of the Admiralty to impress seamen for his Majesty's service. Calahan was one of the crew belonging to the sloop; and, attempting to impress Broadfoot by virtue of the warrant, was by him shot dead on the spot. --- But it appearing that the terms of the captain's warrant, under which this impress was attempted, had not been complied with, the recorder directed the jury to find Broadfoot guilty of manslaughter. The case before him not coming under the general merits of the question, he might have declined entering into it, had he thought proper so to do. But, from motives of humanity, and a desire of serving the community, and preventing future ills, he entered into a very nice and a very learned discussion of the question. He supported his opinion for the legality of the impress

OF IMPRESSING SEAMEN.

impress in a most able manner. His argument, on this Case, is printed with his other excellent and valuable works. His nephew has lately favoured the Public with a new and correct edition of them, illustrated with many references, and some useful additions.

SECTION III.

It is a right inherent in the Government of every civil Society, to employ particular members of it in every service, however hard or dangerous, which the public utility of the Society requires.

SOCIETY, generally considered, is the institution of Nature, or an immediate consequence of those principles and affections, which we are by Nature formed to receive. Civil society is the institution of mankind, already united in general society, by which the system of general society is dissolved, and particular or civil societies established. Government implies that state of mankind, in which these societies are regulated by cer-

General Society,

Civil or Political
Society.

Government.

C

tain

ON THE LEGALITY

tain orders or laws, introduced by custom, or established by agreement.

How Govern-
ment is first
formed.

Man, in a state of Nature, enjoys independence and liberty. Something of this independence and liberty he gives up, when he enters the state of general society: Something more he gives up, when he enters the state of civil society; and something more he still gives up, when he receives the establishment of government. In return, he gains, in the first instance, the general protection of the whole body, against those who trespass on his particular rights. In the second, he gains this protection, not only against those of his own society, but also against all other societies. In the third, this protection being more or less reduced to system, he gains a more easy and more effectual use of it.

It's end.

The forms of government are as various as the circumstances and revolutions of human affairs. They all, however, agree in this, that in all of them there is somewhere lodged a supreme authority, in whom a right of governing the whole society is vested.—Moreover, they are all established to produce
the

the same end ; the good of the whole society. This is the foundation, and these the essential principles, of every society and government. To give them force and execution every member is obliged to contribute, by performing every action, and by receiving every restraint, that the call of society or government orders. He is to sacrifice convenience, comfort, life itself, if the welfare of the whole body require it.

The Duty of the Governed.

I apprehend, nothing of what I have hitherto said will be controverted. I allow, that the utility of all is the foundation of every society and government, and the principle by which the justice of it's operations are to be tried. It follows, of course, that the advantages and disadvantages of government should be equally felt by all.

How then, it is objected, is this system of universal equality consistent with that operation of law, the legality of which you are contending for? That while the greater part of the nation continue in the peaceable possession of all their enjoyments, a part of them is liable to be torn away from their families and occupations, to be fixed in a state

Objection against pressing, from the great hardships it brings on one particular body of men, from which the rest of the community are exempt.

of the greatest hardships, and exposed to constant dangers.

Answer. This
Objection lies
equally against
all institutions
of government.

The measure here complained of cannot be censured, because it is the nature of every operation of government, even of such as are most salutary and beneficial, to occasion inconvenience and hardship to particulars. Therefore, to assert that any law is in itself vicious, and calls for immediate repeal, merely because a particular body of men are prejudiced by it, is to offer an objection which lies equally against every establishment of human institution, and therefore proves nothing against any one of them.

The question now before us does not take in the utility, expediency, necessity, or legality of the measure.—These are separate articles, and will be treated separately hereafter. — At present, we only consider the measure with respect to the objection raised against it, from its only affecting a particular body of the state.

To this objection the short answer already made may, perhaps, be sufficient; but, to give it a more complete reply, it may be proper to consider, attentively, the cause of that
inequality

inequality of men to which this circumstance complained of is owing.

The hardship here mentioned arises from the inequality of mankind. This inequality is not owing to government, but is an immediate consequence of that system of things, by which the great Author of Nature decreed all his works should, to the contracted views of men, appear regulated. One of the means by which government tries to produce it's great end, of working the good of the whole, is by separating the artificial inequality which the passions of men have established, from the inequality into which, by the immediate hand of Nature, they are framed to resolve.

Further Answer.
From the nature
of the inequality
of mankind,

Therefore to impute to government an inequality in it's distribution, of advantages and disadvantages, is to charge it with what cannot, with any justice, be attributed to it. It is to be attributed to that inequality of rank which always has prevailed, and always must prevail amongst men. It is the decree of Nature that it should be so. The more skilful, perhaps the more presumptuous, may pursue their enquiries higher, and argue on it's

it's propriety ; — I take it for granted it is just *.

Inequality of
rank prevailed.

The fact, however, is certain. It is difficult to point out the nation, however rude and uncivilized, in which this inequality has not existed. The German leader, by his acknowledged superiority of blood, and the crowd of emulous warriors fighting under his standard, was not less a subject of envy to his fellow native of a meaner rank, or considered by him to possess less inviable advantages, than the man of high life is now thought to possess by him who scarce earns

* I am happy to find that Doctor Price, whose publications no one can suspect of carrying the prerogatives of government too far, has laid down the doctrine I am here endeavouring to establish, in the most express terms. —
 “ Free governments (says he) are the only governments
 “ consistent with the natural equality of mankind. This
 “ is a principle which, in my opinion, has been assumed
 “ with the greatest reason, by some of the best writers on
 “ government. But the meaning of it is not, that all the
 “ subordinations in human life owe their existence to the
 “ institution of human government. *The superiorities and*
 “ *distinctions arising from the relation of parents to their chil-*
 “ *dren, from the difference in the personal qualities and abi-*
 “ *lities of men ; and from the servitudes founded on voluntary*
 “ *compacts, must have existed in a state of nature.*” See Ad-
 ditional Observations, &c. p. 20.

a daily

a daily subsistence by the sweat of his brow *.

Every distinction of rank, and every difference in the share of honour and hardships, that this situation gave to one man over another, was as nicely discriminated, and as sensibly felt, in that state of society, as the more refined distinctions and differences are felt in the present. If the arts of luxury, and the elegancies of polished life, now fall to the share of the few, while the many can scarcely earn a subsistence at the price of a thousand hardships and dangers; the splendour of superior blood, the right of primogenitor, the glory of being the prince of a numerous band of warriors, the distinction of having the foremost rank at national feasts, the choice of the spoil; in short, all that in those times

and was severely felt, in the earliest states of society.

* This is described with great accuracy, in the famous speech of Sarpedon to Glaucus, in Homer. Il. xii. v. 310.

Γλαῦκε, τίη δὴ νῦν τιτιμήμεθα μάλα

Ἐδρῇ τε, κρείσσιν τε, ἰδὲ πλείους διαίσσοι,

Ἐν Λυκίῃ; πάντες δὲ, θεῶς ὥς, εἰσερόωσι.

“ O Glaucus, why are we so abundantly covered with honours in Lycia? Why have we there the first seats, choice of food, and large goblets? and all look on us, there, as gods?”

made

made the object of the ambition and delight of the human mind, was then shared in as equal disproportion among the race of men as it is now. If we are not sensible of this, it is because we estimate the simple and almost natural manners of those times, by the refined and artificial feelings of the present.

Causes of this
Inequality.

I should beg the Reader's pardon, for leading him into this path of metaphysical subtlety. It seemed to me necessary, in order to give a satisfactory answer to the above objection.

All inequality of rank is founded on this, That one man possesses a larger share than the rest, or has better means than they have, of acquiring that which all equally seek after. Hence those who cannot procure this object of their desire, without his leave or assistance, depend upon him for it; and the measure of their dependence is in proportion as his leave or assistance is necessary to them. Superiority of understanding must, in every state of mankind, give him who enjoys it an advantage over his inferiors. Superiority of bodily force, in the early ages of mankind,
was

was another source of advantage. These being often exercised with injustice and cruelty, it was found necessary, for the public utility and convenience of mankind, that there should, somewhere, be lodged a power to protect the weak from the oppressions of the strong.

Though government and law take no notice of the inequality, and admit not of the distinction, between the wealthy and the poor, which is now so strongly seen; though the actions they prescribe, and the restraints they impose, are held out equally to both; yet the situation of human things is such, that this inequality will always take place, and the upper part of mankind will seem privileged at the expence of the lower. Law respects not individuals; but as it cannot reduce to a plane the inequality in which it finds us, it ought not to be blamed, because it's operations are seemingly more severely felt by one part of mankind than by the other. It is a mistake to think that this distinction, in the labours of the day, which the institution of government appear to make, is an effect or operation of government: It is coeval with it, but it is not the effect of it. It is the con-

It has it's origin
in Nature;

nowise imputable
to government;

D

sequence

corrected in some measure by it; but not to be entirely removed.

sequence of that previous inequality in which Nature, when she created us, meant us to stand; and in which Government, in it's first establishment, found us placed. One of the ends of government and law, is to remove it's inconveniencies; but to attempt to remove it entirely is the wildest project that the human mind can conceive, and perhaps, of all the visionary speculations that enter a projector's brain, the most impracticable.

Therefore no establishment is faulty merely because it imposes a burthen, the weight of which immediately falls on the lower ranks of life.

I apprehend that what is here said, on the causes of the inequality of mankind, is sufficient to obviate any objection that can be made to the justice or propriety of any institution of government; because, in the present system of things, it seems to impose on the lower rank of subjects a task of hardship and danger, from which those of higher rank seem entirely exempted. I do not mean to say, that the government of any society has a privilege of spreading this system of inequality, farther than the nature or course of things makes necessary. — I only contend, that it is a necessary and unavoidable effect of the system of human nature, that the advantages and disadvantages of all human institutions should be unequally felt. Consequently,

quently, when we object to any institution, it is not sufficient to shew that it has this inequality in its operations, but it is also necessary to prove, that this inequality is greater than the course of human things makes necessary, and might be remedied by other institutions.

To apply what has been said to the question before us; — Let us suppose a state of society in which all mankind are equal in every respect; that the whole body of the people delegate, to a few, power to enact laws for the good of the whole. Any exercise of this power, by which one particular set of men should be placed in a situation similar to that in which the seamen is placed by the impress warrants, would be (in my humble opinion) a mal-execution of the trust. For no reason could be given, no state-necessity pleaded, for such an impartial operation. Though, even in this supposed state of society, some inequality must take place yet it is by no means either necessary or expedient that it should be so great.

This Point further illustrated.

If we continue to trace the state of society, we shall find that the inequality of rank will

inevitably be greater, and more sensibly felt, in proportion as the society advances in refinement. Perhaps the first advances of such a state may be in the article of military discipline. This, at once, introduces a system of the greatest inequality. The system of human things admits not a more striking instance of the unequal condition of the ranks of men; nor is it possible, I believe, to conceive two greater extremes, than the situation of a *general* and that of a *private soldier*. The former is surrounded with every allurement to pleasure, and every incitement to virtue; is hourly solicited by every passion which the human mind wishes to gratify, by every delight the human frame seeks to enjoy, and by every virtue which humanity can attain; while the soldier thinks himself uncommonly fortunate, if he be supplied with a tolerable portion of the most ordinary nourishment, if his daily labour exceeds not the utmost of his strength, and if, at night, a small quantity of clean straw be given him to put under his weary limbs. If a general have but an ordinary share of talents and virtue, he is certain that the slightest display of them will be splendidly rewarded; while there is not a day in which the soldier does not exercise some or other of the most useful virtues, if
not

not always unknown, at least almost unnoticed, and consequently unrewarded. —

Here then we find, in a very early state of society, the two most distant points of inequality in the race of men. Yet, I believe, there are few persons so exceedingly visionary as to say, that a consideration of this inequality should induce a sovereign (however virtuous and humane) to disband his armies: And if reasons of state be allowed to have weight thus far, what is there to keep us from allowing them one degree farther; granting that, as no argument can prove that it is the duty of a good sovereign to disband the armies of a state, from a view of the hardships of the common soldier, so no argument can prove, that the sovereign of a state has not a right to compel any individual, or any particular rank of individuals, into the service, because the persons so compelled suffer hardships from which others, in the same state, are exempted.

The same argument, which is thus offered against the legality of the impress, equally lies against every other instance of inequality, that a state of government must always bear.

It

It equally lies against all unequal distributions of ranks, of property, of places, of honour, and trust. Nay, it equally lies against the very existence both of property and government. The very meaning of which words implies a prerogative enjoyed by some members of the community, exclusive of the rest.

To conclude, — In the present advanced state of society, we certainly are not to form our notions of right and wrong, or to argue on the propriety or legality of any measure, from a view of what, in a state of nature, or in the earliest state of society, would be according to our apprehensions, the situation of things, and the particular rights enjoyed by individuals. — Speculations of this kind, however agreeable to the imagination, can never satisfy the understanding; — they may delude, but can never convince. In the hands of the visionary, or of the designing part of mankind, they are powerful engines to establish systems, or to raise discontents; but it will be difficult to prove, that we are indebted to them for *one* good law, or for *one* useful establishment. The only topic of real argument is, whether the law or usage complained of can be anywise altered for a better:

better : And whether the alteration proposed is such, as the general system of government admits. A general change in the established form of government, will never be proposed in argument by the rational part of mankind ; and no measure, which presupposes such a change or alteration, or which cannot be carried into execution without it, though it may be proposed by the artful, or attended to by the weak, can have the attention, and still less the approbation, of the intelligent.

SECTION IV.

It is necessary, and expedient, to the British Government to impress Seamen for the Public Service.

THE strength, and even the existence of England, as a nation ; it's wealth, power, and happiness ; it's importance in the affairs of kingdoms ; it's domestic welfare, and it's security from foreign enemies, depend entirely on it's navy. Whether we view it's domestic

The Welfare, and even the existence of this nation, depend on it's naval prosperity,

domestic policy, or the part it assumes in the affairs of other nations; it clearly is a naval power. Many other causes may advance it's greatness, or urge it's fall; but while it maintains it's naval strength, though it may be weakened, it will not be conquered; and though it may be much distressed, it will never be quite subdued: It is, therefore, the first duty of government to provide for it's naval establishment, and the first duty of the governed, to discharge the obligations imposed upon them on this account.

Our Naval Concerns have the first claim to the attention of Government.

Though the wisdom of government will extend to every point which demands it's attention, and will effectually regulate all by proper and just provisions, yet certainly our naval concerns have a claim to it's first cares; and, in case of any competition of objects, have the right of preference over all other concerns. No private interest, no public establishment, should ever be allowed to stand a moment against our naval requisitions. Their wants must be first answered, their demands first satisfied.

To man our navy properly, is one of it's first concerns. Now, if this cannot be done
but

but in the manner I contend for, the dispute ceases; — that mode must still be adopted, however individuals, however even other national concerns, suffer by it.

With respect to the present mode, — I beg the reader to consider how long it has been in use. Though I may be wrong in placing it as high as the reader will afterwards find I date it, yet no one will deny it's having been in practice since the British nation has taken a part in the affairs of Europe. If we may credit those who declaim against it, it is a practice most grievous, on those who are it's objects; a measure most ruinous, and most expensive to government, and ill calculated for the end it is designed to serve. Should a stranger to the affairs of Europe hear this, he would naturally conclude it had always been a topic of popular complaint, that the nation was quite ruined by it, and it's navy now no more, or mouldering to nothing in a visible haste. — Happily for us, neither the cause nor the effect exists. From the period I mentioned, to the present moment our navy has been continually advancing in every article of improvement and utility. It has now reached a point, far beyond that

The present mode of manning the Navy has been so long used;

has answered it's purpose so well hitherto;

E

in

in which the most sanguine fancy would have placed it a century ago, in the longest reach of patriotic hope. No nation but has felt it's power, or been witness to it's wealth.

Venimus ad summam fortune.

We seem to disdain the known ocean. — We engage systematically in undertakings which the revolution of a century seldom sees twice repeated, and which, by the spirit and conduct with which they are managed, indisputably prove us possessed of every art and finew of navigation.

During this period, the nation has engaged in many wars, and sometimes against the good-liking of the people. Who knows not how successfully studious faction ever is, upon these occasions, to invent new grievances, and to aggravate the old? And what arts are made use of to distress ministers, even at the expence of the national welfare? Now, if the impressing of seamen were really as unconstitutional a measure as it is said to be, would not opposition, long before this time, have made this discovery, and used it for their purposes. Early in the first Charles's reign, the patriots of those days engaged him
in

has not been objected to till a very late period;

in a war with Spain, and afterwards in another with France, and then refused him supplies to carry them on. Would they not have been equally careful to add this distress upon him, by controverting this mode of raising men, had they thought they had the least colour in doing so? Yet certainly the minds of men were never more bent on distressing government, or less scrupulous in their means of doing it; more vigilant in discovering usurpations of custom in favour of prerogative, or more ready to publish them to the people.

During this period the constitution has been thoroughly examined, the secrets of government revealed, the mysteries of prerogative scrutinized. How came it to be reserved for so late a period to discover that the pressing of seamen is illegal. In those days, when learning ransacked all her treasures, to prove the most acknowledged rights of government so many encroachments on the people's liberties, no objection was ever taken to that we are speaking of. Within a few weeks after the *magna charta* was signed, the usual warrants issued for impressing seamen. Within a few years before the Bill of Rights

and it's legality
so seldom called
in question;

was presented, the commons made it one article in the impeachment of a court favourite, that he had not, when the sea-service required, impressed seamen in the usual manner.

That strong presumptions arise, that it is expedient, necessary, legal, and constitutional.

I do not wish to press these arguments farther than they carry themselves in the minds of unprejudiced readers. I know how far they move, and so far only I wish them to have effect. But certainly a measure which so well serves the purpose it is designed to answer, can have little objection made to its expediency: A measure which, though seemingly repugnant to the general operations of the British government, has been so long the custom of the kingdom, can have few objections made to its necessity. — In brief, a measure which has been so long adopted, and never formed inimical to the progress of liberty, which, till very lately, neither the patriot nor the incendiary found any thing improper or unconstitutional, cannot but be consonant to the genius or principles of the British government.

Here then we stand. Whoever objects to an usage so long acquiesced in, and which
has

has hitherto proved so serviceable, as a mode of serving an end, which must somehow or other be served, should have some other mode to substitute in it's stead. This is a preliminary, without which it is losing time to listen to any objections. The fleet must be manned. — The present method of manning it is bad. It is ruinous, inefficient, unconstitutional. It may be so. — But what other scheme is proposed? — Till such other scheme be proposed, and universally approved, the fleet must be manned, and we must continue in our old way of doing it.

No objection against it can be attended to, unless some other expedient be proposed in it's stead.

In King William's reign, a mode was proposed by having a register. The reader will find, in the last chapter, an account of what passed in parliament upon that occasion. It is sufficient here to observe, that it did not succeed. One of the objections which brought the negative of the House to the proposal was, that it was inadequate to it's object.

Proposal for a Register found to be inadequate.

Another mode is often talked of in conversation, To increase the bounty offered to seamen. As to this, I cannot but observe,

An increase of Bounty offered to Seamen would not answer.

that

that either the grievances which the common people are said to suffer by the custom of pressing, are far from being what they are said to be, or this will be a very inadequate recompence to them.

But the scheme is in itself impracticable. The merchant, by reason of the gains of his merchandizing, and the riches of his freight, will always offer more for seamen than government can. And as public and private wealth must, in the present course of things, move in equal pace, however wealthy government may be, the merchant will always have ability to outbid them. Any scheme of this nature, therefore, though it may distress the merchant, will never serve government.

It is also an expence to which no government is equal, to support, in times of peace, the same naval establishment it maintains in time of war. The military peace establishment of every European power is an heavy charge upon the public; and only justifiable as a precaution against any sudden effort of a neighbouring state. To add to this weight would be a strange solecism

in

in politicks. To see, therefore, the impracticability of any proposal of this nature, it is only necessary to consider the insupportable burthen it must of course bring upon the public.

Besides as upon these occasions the men required must be such as are somewhat conversant in the business, the only persons who can answer the wants of government, are those whom merchant service has already instructed.

The Men required must be those whom merchant service has already instructed.

“ By this means (says Mr. Justice Foster) the trade of the nation becomes
 “ a nursery for her navy ; and the Merchant
 “ while he is increasing the wealth of the
 “ kingdom, is at the same time training up
 “ the mariner for it's defence.

Excellent observation of Mr. Justice Foster.

“ And as for the mariner himself (continues the same excellent Author), he, when
 “ taken into the service of the Crown, only
 “ changes masters for a time. His service
 “ and employment continue the very same,
 “ with this advantage, that the dangers of
 “ the sea, and enemy, are not so great in
 the

"the service of the Crown, as in that of the
"Merchant."

Again. — Personal service is the only service by which the poor man can discharge his obligation to his country. Those who suppose that, by the laws of society, all the members are equally called to do personal service, apply a law incident to some states of society, to society in general, and to all its states. In an early state of society, as soon as war is declared, every one is a soldier. All take to arms, and join the battle. Those days are now no more. — In military governments, when the only road to the smiles of the prince, or the favour of the public, is military prowess and renown, military service will always be an object of ambition, not a point of constraint. — But, happily for us, this is not our form of government. — We are a country founded on commercial principles, and the welfare of the nation is too intimately connected with the welfare of its commerce to bear even a temporary separation. Our system of government is in a very high degree of political refinement. Government, therefore, also claims a great share of our attention. To allot to any one,
or

or to either two of these objects, all our attention and powers would be the ruin of them all. It is endless to repeat what has been already said respecting the inequality of rank. So while the noble and most opulent of the nation contribute to it's welfare, by the part they take in it's government, and by the taxes raised from their property; the merchant, by extending it's commerce, and by the duties raised upon his merchandize; the poor man (but not the least valuable) pays his contribution in personal labour and service.

I sincerely wish it was in my power to invent any mode of manning our fleet less burthensome than the present upon the poor man. I wish it were in my power to call the dissipated and the luxurious to a view of *his* hardships. The man that would effectually employ himself in the attempt, would deserve highly of the public. Should his endeavours prove ineffectual, still his intentions would deserve our warmest thanks. But to draw these hardships in colours much stronger than their reality exists in nature to be for ever presenting them to the poor sufferer's eye, with every aggravation that art or elo-

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quence

quence can join to them, is, (to speak in the gentlest terms) a very injudicious and improvident proceeding.

I shall conclude this section with the expression of a writer, whom no one will suspect of holding doctrines unpalatable to the body of the people, unless strongest conviction made him think it unavoidable, and who certainly possessed (if ever man did) what another personage * of far most amiable celebrity describes, the art of seeming to guide when one only follows. — “ Let bounties, “ says Junius, be encreased as far as the public purse can support them, still they have “ a limit; and when every reasonable expence is incurred, it will be found, in “ fact, that the spur of the press is wanted “ to give operation to the bounty.”

But, with respect to any intermediate steps which may be taken, or any greater inducement which may be held out, to seamen, to make them enter voluntarily into the service, it would be improper, here, to take them into consideration. The author cannot but think himself perfectly incapable of any dis-

* Mr. Burke, speaking of the late Right Honourable Charles Townsend,

cussion of this nature. The only point which is his intention to investigate is (as he before observed) the propriety and legality of the impress, *as a measure to be used in the last resort*; a mode to *compel* the seaman into the service, when every possible mode has been used to invite him to enter voluntarily, and is found insufficient.

SECTION V.

That the Impressing Men for the Public Service is a Measure of Necessity and Expedience, and that the Duty of personal Service must fall on the lower Rank of Men, as soon as a Nation becomes wealthy, and attends to Commerce, shewn by the Examples of some free States, antient and modern.

AS nothing gives so much force or colour to argument, as illustrating it by examples, it is not to be wondered that almost every writer, be his subject what it will, has recourse to their assistance, whenever he thinks he can make them either of use or ornament. But this has been so much abused, that it is now become almost as ungrateful to mention in writing the Greeks and Romans, as it is

disgusting (if we credit our late noble epistolarist) to mention them in conversation. In the present instance, however, it is so necessary, that we hope the most fastidious reader will excuse the few pages which compose this section, though he sees the Greek and Roman name there often repeated.

Greece.

I begin with Greece. Thucydides takes notice, that it was sometime after the taking of Troy that the Greeks applied to shipping and naval affairs. As the several states of Greece advanced in strength, and the refinements of policy, there was a competition among them for the empire of the sea. I state these facts, to shew how far a just inference lies from the example of their institutions in naval affairs. This empire consisted in the number and force of their vessels, and skill in navigation. Their ships took all the sea, from the islands of Crete and Rhodes, to the Cyaneaps islands, the furthestmost field of their expeditions towards the west was the Ionian sea. This empire passed in succession through many hands. The Athenians and Lacedemonians often contended for it. The latter people I shall here pass over. Their thorough contempt of commerce takes off all reasoning by analogy

logy from their example. But if there is, in the scroll of history, any nation whose resemblance to us invites us to this mode of reasoning, it is the Athenian. In the spirit of their government they much resembled us. In their jealousy of any attempt on their liberties, in their easy fascination to every artful demagogue, they reflect us. — Like us, they were a naval power, and addicted to commerce. So that if we can prove the impressing of seamen was one of the established methods of manning their fleet, and that it fell on the lower rank of the state, it goes far to prove that, in every naval and commercial state, it is a measure of expediency and absolute necessity.

The people of Athens were divided by Solon into four ranks. The original laws of Athens, like our laws, prescribed military duty as a general service, and never pointed out any particular set of men to execute it. But when it's advanced state of refinement and wealth introduced the various divisions and subdivisions of rank, the article of personal service naturally fell on the lower ranks. Bishop Potter, in his learned *Archæologia*, observes, That, among the primitive Greeks, the levy was frequently made out by lots, every

very family being obliged to furnish out a certain number, and filling up their proportion by the chance of lots. Afterwards the magistrates appointed those who were to go to war. — But, in the latter period, those who served in the armies received a pay, which was raised by a tax on the whole commonwealth, and when this was found insufficient, by a tax on the richer part, and the men of quality. Thus, by the natural effect of wealth, the burthen of the day in public service fell on the poor. So we find in Thucydides that, even upon an extraordinary preparation, the persons of the first and second class were exempted. I quote the

words, *αἰσθομνηοὶ δὲ αὐτοὺς οἱ Ἀθηναῖοι διὰ κατὰ γινώσκουσι ἀσθενείας εἶναι παρασκευαζομένους, δηλῶσαι βουλόμενοι ὅτι οὐκ ὅξυνες ἔργω κασιν, ἀλλ' οἰοί τε ἴσσι, μὴ κινουήεις τὸ ἐπὶ Λέσβῳ ναυτικοί, καὶ τὸ ἀπὸ Πελοποννήσου ἐπιού ραδίως ἀμύνεσθαι πλεῖρωσαν ναὺς ἱκανόν, ἰσβάλλεις ἀδ' οἱ τε, πλεῖν ἱππῶν, καὶ πητακοσιομηδιμῶν καὶ οἱ μείλοικοι.* “ When the Athe-

“ nians found that such preparations were
 “ made against them, as an avowed insult
 “ on their imagined weakness, they had a
 “ mind to convince their foes that such
 “ imaginations were erroneous, and that
 “ they were able, without countermanding
 “ their fleet from before Lesbos, to make
 “ head

“ head against any force that could come
 “ from Peloponnesus. Accordingly, they
 “ manned out an hundred ships, obliging
 “ all, as well sojourners as citizens (those
 “ excepted of the first and second class) to
 “ go on board.” Smith’s Translation *.

I proceed to speak of the Romans. Their Romans,
 levies were carried on with so much strict-
 ness, that a person refusing to enter the ser-
 vice, or aiming to avoid it by the slightest
 subterfuge, incurred the severest penalties.
 We read in Valerius Maximus, that, in the
 war against Pyrrhus, the people being ex-
 tremely averse to the service, one of the
 consuls went to the capitol, according to the
 usual ceremony, to open the muster, and
 the person whose name was first read not
 answering, he immediately ordered him to
 be sold, saying, that the republic was bet-
 ter without the citizen that knew not how
 to obey.

In the Roman republic, where foreign
 commerce was, till a late period, little prac-
 tised, and was never the road to honours or

* Thucidides, book iii.

glory,

glory, and where, till it's very latest period, even the elegant arts were held in the greatest contempt, as the sole object of the ambition of the citizen was military distinction, there would be no need of compulsion, except in some very particular times, to fill any compliment of troops, that the service of the republic might demand. But in the Roman republic, as in every other state, when wealth was introduced, and, with it, it's constant concomitants, luxury and a love of ease, the numbers who shrunk from the duty of personal service increased every day. Wealth, then, became an object of ambition; but, as wealth was then obtained by military success, not by the arts of commerce, war and arms still continued the chief, though not the sole, profession of a Roman citizen. Thus, even their navigation and commerce were made entirely subservient to their military aims, and their medals shew that they cultivated navigation with a view of extending their arms, and that commerce was it's least object. But, notwithstanding this, those among the opulent, who wished more to enjoy than to acquire, used the prerogative which wealth must always give to exempt themselves from personal

OF IMPRESSING SEAMEN.

personal attendance; which, however, still remained a necessary, and an unavoidable duty and obligation on the poor. This is very clear, from the many invectives which Sallust has studiously interwoven in his history against the nobility. "The nobles, " (says he in one place) being united in " themselves, enjoyed great advantages; " the force of the people, disjointed and " dispersed, lost much of it's real powers. " The civil and military were entirely at the " direction of the few.—By them, the treasury, the provinces, the offices of the republic, it's honours, it's triumphs, were " entirely ingrossed. Warfare and want " were the lot of the people. The spoil of " war went to the chief in command, and a " few individuals: Meanwhile the parents " of the soldiers, and their infant children, " were driven from their homes, at the " mercy of every more powerful neighbour." Marius, in his speech to the people, desires them to consider with themselves, " Whether it were better for them " to have, for their general, one chosen " from the body of the nobility, a man of " antient blood, and splendid descents, but " at the same time, one who had never seen

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the

“ the service, — and who would be necessi-
 “ tated to enquire his duty from a common
 “ man, like themselves.”

I could crowd in numberless other quotations equally apposite to the fact in question. But, I hope, those I have inserted are sufficient to show, that however high-spirited and fond of arms a nation may be, still some coercion is necessary to bring them regularly to the field : And also to show that the only persons affected by this coercion must, in all states, when the pursuits of wealth once obtain a footing, be those that make up the lower rank *.

* The Author of a work, which (setting aside the religious principles it is supposed to contain) has received the most universal, and, at the same time, the highest tribute of praise, which has been given to any work in this century : The continuation of which is the most interesting object the literary world now has in attention ; Mr. Gibbon, in the first chapter of his History of the Decline and Fall of the Roman Empire, describes, with his usual elegance and unaffected rapidity, the revolutions which took place in the military history of the Romans. As this part of his work is very pertinent to the present subject, and as it would be an injury, both to the excellent Writer and the Public, to give it otherwise than in the Writer's own words, I beg leave to refer the Reader to it.

“ In the purer ages of the common-wealth, (says he)
 “ the use of arms was reserved for those ranks of citizens
 “ who had a country to love, a property to defend, and
 “ some share in enacting those laws, which it was their
 “ interest,

In every period of our own history, the lower class of the nation has always had personal service, and every other office of hardship and danger, allotted to them. Very soon

“ interest, as well as duty, to maintain. But, in proportion as the public freedom was lost in extent of conquest, war was gradually improved into an art, and degraded into a trade *. The legions themselves, even at the time when they were recruited in the most distant provinces, consisted of Roman citizens. That distinction was generally considered, either as a legal qualification, or as a proper recompence for the soldier; but a more serious regard was paid to the essential merit of age, strength, and military stature †. In all levies, a just preference was given to the climates of the North over those of the South: the race of men born to the exercise of arms, was sought for in the country rather than in cities; and it was very reasonably presumed, that the hardy occupations of smiths, carpenters, and huntsmen, would supply more vigour and resolution, than the sedentary trades which are employed in the service of luxury ‡. After every qualification of property had been laid aside, the armies of the Roman emperors were still commanded, for the most part, by officers of a liberal birth and education; but the common soldiers, like the mercenary troops of modern Europe, were drawn from the meanest, and very frequently from the most profligate of mankind.”

* The poorest rank of soldiers possessed above forty pounds sterling, (Dionys. Halicarn. iv. 17.) a very high qualification, at a time when money was so scarce, that an ounce of silver was equivalent to seventy pound weight of brass. The populace excluded, by the antient constitution, were indiscriminately admitted by Marius. See Sallust. de Bell. Jugurth. c. 91.

† Cæsar formed his legion Alauda, of Gauls and strangers: but it was during the license of civil war; and after the victory he gave them the freedom of the city, for their reward.

‡ See Vegetius de Re Militari, l. i. c. 2.--- 7,

after the Norman conquest, arrere vassalage, or the practice of subinfeudation, was established, and one of the causes of that establishment was (said Mr. St. John, in his argument on the Case of Ship-money), that those who held immediately of the Crown desired to free themselves of the burthen of service; and their feoffees, in consequence of the conveyance to them, took the whole burthen thereof upon themselves*.

Lower Empire.

The system adopted in the lower empire was very similar to that which has hitherto prevailed in England. The Theodosian Code, and the body of the Civil Law, are full of the great attention which the Constantinopolitan emperors paid to naval affairs, which their situation, and the rival power of the Saracens and the town of Great Cairo, built by them, compelled them to exert with the greatest vigilance. They entertained, in different places, various fleets, and granted most valuable privileges to those to whose care they were intrusted, and afterwards admitted them of the equestrian order.

They were united in a body, not unlike our trading companies, each individual trad-

* See State Trials, new edit. p. 519.

ing on his own bottom. They were stationed in different parts of the empire, and employed both in public service, and in the private trade of individuals. The public business was divided between them; such voyages as were to be taken on the public account, they undertook in succession one after the other, by which means each of them had his several share of the general burthen, and his stated times to attend to his own private concerns. The profession, or trade of mariner, was annexed to moveable and immoveable property, and annexed to the property, not to the person, of the proprietor. This was so essential a condition to the holding of that property, that no honours of the republic, not even the Emperor's own rescript, could separate them; and nothing could avoid it, but an uninterrupted possession of 50 years. What was this moveable and immoveable property, to which the condition was annexed, or how it was created, it were needless to shew.

When they were employed on the public service, it was unlawful for them to load their vessels with private merchandize. But at other times they were allowed to trade on their own account; yet so that, if the public

lic service required it, they were immediately to employ themselves in it: Thus the Emperors Arcadius and Honorius express themselves. "As we do not forbid individuals keeping vessels, so as they do not use this leave to defraud the public; it being their duty, if necessity calls for them, to attend to the public concerns *."

Venetians.

Of the many states which date their origin from the decline of the Roman empire, none more deserves the attention of the Reader than the Venetians. The wisdom, and the peculiar form of their government, the degree of power and wealth which they long enjoyed, and a spirit of patriotism, which would reflect honour on any nation, and for which they are deservedly renowned, force our esteem and admiration. Though they

* See Cod. Theodos. lib. xiii. tit. 7. c. 2. under the articles *De Naviculariis*, *De Prædiis Naviculariorum*, *De Navibus non excusandis*, et *De Naufragiis*.

The late Dr. Jortin, whose classical taste and great erudition are very well known, strongly recommended the reading of the Codex Theodosianus, as a work which throws the greatest light on the history and the antiquities of the Lower Empire. Its merit (taken in this light) is considerably enhanced by the valuable edition of it published by James Gothofred, with ample notes and illustrations. This edition was the labour of thirty years intense application; and no one (says Baillet *Jugement des Sçavans*) thinks the editor lost his time.

were

were far from enjoying political liberty in the perfection we do, yet they enjoyed it in a high degree. The system of representation, which some writers have not scrupled to call a very moderate discovery, was in use with them from the earliest time of their having a regular government till the seventh century. The alteration which then took place was by introducing the Doge as a prince or chief, over all other magistrates. The Doges, in later years, abused their power greatly, and aimed at sovereignty, but the people prevailed in this contest; — and, about the end of the twelfth century, a revolution was effected, which was originally designed in favour of the people, but ended, as most revolutions do, in placing them in a much worse condition than they were in at first. The power of the Doge was indeed taken away, but very soon afterwards the national council, which before was elected annually, was made permanent; by which the constitution fell into an aristocracy, in which it has ever since remained. But, in every period of the Venetian history, this infringement of the liberty of individuals, as it is called, was practised. I appeal to every person conversant in the history of the world, in the times of the
Lower

Lower Empire, Whether, on every preparation for war, one of the first things done be not to arrest all merchants ships, and employ them, and all the men on board them, in the public service; and this was as much practised by the Venetians as by any other state. Their history is full of the complaints of merchants for the detention of their ships on the public use. They carried this farther, and in a manner much more oppressive than we do. We confine the press, unless a want of men be very severely felt, to homeward bound ships. They equally exercised it on the outward and homeward bound.

General Remarks on the Authority of the Civil Law.

The instances I have here adduced shew clearly that the Spur of Compulsion, to repeat Junius's elegant idea, is necessary to give force to every other operation that policy can invent to invite men to the sea service. The example I have quoted from the constitution of the Greek emperors may lose some of the weight it should otherwise have, on account of the prejudices which are usually entertained against the civil law, on which they are founded. — In answer to this, we beg leave to remark, that we do not by any means pretend to cite any institution

tution of the civil law but as a matter of argument. The greatest admirers of the British constitution, and those who have contended most warmly for the preference of the Common over the Civil Law, allow the latter the highest praise, as a collection of Written Reason; as useful and ornamental to the scholar, the divine, the statesman, and even the common lawyer*; as a material cause of the revival of letters, and of establishing more just and liberal ideas than had before obtained of the nature of government, and the peace and order of society†. It's institutions, however censurable as giving unlimited and absolute power to the emperors, were certainly salutary and beneficial to the lower ranks of life; — and whoever supposes it contains little more than a regular system of arbitrary power and oppression, must be little conversant with it's contents.

* Blackstone, Int. § 1.

† See Robertson's Hist. of Cha. V. vol. I. § i. art. 6. See also Dr. Hallifax's Preface to his Analysis of the Common Law.

SECTION VI.

That the Right of Government to impress Seamen for the Public Service, is not against the Constitution of this Realm; and that it always made a Part of our Common Law, and is repeatedly recognised by our Statute Law.

Difference of the
Meaning of the
words Legal and
Constitutional.

THE Reader may observe, that I assert the practice of impressing to be both Legal and Constitutional. By Legal I mean, that it has the sanction of law; by Constitutional, that it is congenial with the spirit of the constitution. I apprehend it is possible to be the one, without being the other. The legislative power may chance to pass a law, which experience may afterwards shew to have been repugnant to the genius of the constitution. So the genius of the constitution may require some additional institution to be passed into law, or some established institution to be abrogated, without attracting the attention or assistance of the legislature. I wish to impress the Reader with this observation, because I think much of the perplexity which is generally found in the discussion of political questions might be avoided by attending to it. Thus, when we shall endeavour to prove that it is legal, it will be by

by no means a proper answer to assert, that it is unconstitutional. In the same manner, I think it no answer to the assertion of it's being unconstitutional, to produce one positive law in it's behalf. — They are therefore separate articles: But the examining either of them reflects light upon the other.

I shall begin by proving the practice in question to be constitutional.

First Point.
That the Practice of impressing Seamen is constitutional.

Pressing, or, in other words, obliging persons to serve the public contrary to their will, appears throughout our constitution in a variety of forms. It is impossible to point the time when it did not exist. It is the nature of all government, that some of it's offices should be the objects of the ambition, others the objects of the dislike, of the individuals governed. To some of them is annexed whatever attracts the wishes of the human heart; to others, expence, labour, and danger are inseparably joined. The latter are not less necessary to the existence of government than the former. But as individuals seldom possess the ethereal spirit of patriotism in a sufficient degree to make them seek, by their own choice, the latter objects, it is absolutely necessary that go-

The circumstance of pressing appears throughout our constitution in a variety of forms.

vernment should have recourse to compulsory methods. What was originally the election of members to serve in parliament, but impressing such persons as were deemed qualified by fortune and abilities to perform the public business * ? For doing this duty they received a stated stipend ; against it they had no negative. Where would our constitution have been if, in those days, the language which now is used by the adversaries of the press, had been used by the wealthy commoners, and met with it's desired effect ? What is at present the obligation to serve the office of a sheriff, but being pressed to a service of fatigue, expence, and even of danger ? To persons of inferior rank, are not the serving the office of a jurymen, a church-warden, a constable, or any other parish-office, all different species of pressing, all of inconvenience, some of danger, to the parties ? Yet society could not exist without such service. And has not the sheriff a right, on certain occasions, to raise the *posse comitatus* ? and what is this right, but a right to press every male in his county above fifteen years

* " Their attendance was, for a long time, deemed a burthen both to themselves and their constituents." Ruffhead's Preface to his edition of the Stat. p. xii. See Prynne's Animadversion on the 4th Inst. p. 32. Maddox's MSS. in the British Museum, No. 13. Title *Parl.*

of age (peers excepted), who are obliged to attend under pain of fine and imprisonment? And has not the Militia Act made every man liable to serve as a soldier, and, at times, subject to the articles of war?

I must here beg leave to introduce a reflection. — Of all the different persons forced into the service of the public, the seaman is, perhaps, the least injured. Those who hear nothing of pressing but what is told them in the declamations of it's adversaries, will not be a little surprised at this assertion. They think every impressed seaman the most miserable object in human nature, and that the wrath of heaven and earth is at once deluged upon him. Torn, in the moment of his return from a long voyage, full of the hope of seeing his family and friends, his affectionate parents, a fond wife and lovely children, forced upon a long and perilous voyage, exposed to innumerable hardships and dangers. Such is the picture they have been taught to frame to themselves of every impressed seaman; but such a circumstance does not exist; or, if it does exist, it exists so seldom as to deserve no attention.

In the first place, generally speaking, what is the condition of this man? Is he not like
a shop-

Of all persons pressed into public service, the seaman is the least oppressed.

a shop-keeper, chosen into the Militia, and forced to learn a new trade. He is only obliged to labour at that employment which he has chosen, and which he knew was subject to this call ; — a call which, ninety-nine times out of an hundred, snatches him from disease, from misery, or perhaps an ignominious death ; the inseparable attendants of idleness, intemperance, and bad company. For the truth of this observation, I appeal to every one conversant with the manners of seamen whilst on shore, or who has ever visited the purlieus of Wapping, Rotherhithe, or the Point at Portsmouth.

But suppose the person pressed should happen to be that *rara avis*, a prudent seaman, he is far from being injured : For though, perhaps, his wages are somewhat lower than those given by merchants, yet that is amply compensated by his chance of prize-money ; in the meantime he is better fed and clothed, better lodged, and endures fewer hardships, than he would on board a merchant-man. If he have a family, he has an opportunity of regularly remitting to them part of his pay for their subsistence, and is besides restrained from riotously wasting it, and obtains

tains a right to a comfortable provision for his old age in Greenwich hospital. It may be asked, that if all this be true, what makes seamen so averse to the King's service? The answer is, the strict discipline kept up on board the King's ships, whereby they are prevented from running into those irregularities and debaucheries, of which seamen are so peculiarly fond, and which proves so fatal to them.

I think I have now fully shewn, that compulsion to public service is perfectly congenial to the spirit of the English constitution; that it does not fall so hard upon the seaman, as the compulsion to some other duties does upon their immediate subjects; and that it is not so very great a calamity upon him as it is some times thought to be. What has been here said might, perhaps, have been more regularly inserted in a former section; but as I have found that the nature of this question is such, that however cogent the argument in favour of the legality of the impress may be, the constant answer to it is, by appealing from the understanding to the feelings of the heart, I was willing to meet this answer with a proper reply.

Another

Another objection made to the practice in question is, by asking, What is the difference between the press-warrants and the warrants for ship-money? The answer is plain, the raising of money for the expences of the fleet can be carried on in a much better mode. It has not therefore the plea of necessity or expediency. But, say they, the precedents for ship-money are as strong, as numerous, and as unvariable, as the precedents of impressing men. I contend they are not so strong, so numerous, or so invariable. The reader will shortly see the nature of the precedents I mean to adduce. It is not here the place to enter into the question of ship-money. I shall content myself with producing the sentiments of one whom no one will accuse of prejudice against the House of Stuart, and whose learning and penetration are unquestionable.

“ In most national debates, though the
 “ reasons may not be equally balanced, yet
 “ are there commonly some plausible topics,
 “ which may be pleaded even in favour of the
 “ weaker side; so complicated are all human
 “ affairs, and so uncertain the views which
 “ give rise to every public measure. But it
 “ must

“ must be confessed, that, in the present age,
“ no legal topics of any weight can be
“ thrown into the opposite scale. The im-
“ position of ship-money is apparently one
“ of the most dangerous invasions of nati-
“ onal privileges, not only which Charles
“ was ever guilty, but which the most ar-
“ bitrary princes in England, since any li-
“ berty had been ascertained to the people,
“ had ventured upon. In vain were prece-
“ dents of antient writs produced: These
“ writs, when examined, were only found
“ to require the sea-ports, sometimes at
“ their own charge, sometimes at the
“ charge of the counties, to send their
“ ships for defence of the nation, when the
“ prerogatives which impowered the crown
“ to issue such writs was abolished, and it’s
“ exercise almost entirely discontinued, from
“ the time of Edward III.; and all the
“ Authority which remained, or was af-
“ terwards exercised, was to press ships in-
“ to the public service, to be paid for by the
“ public. How wide were these precedents
“ from a power of obliging the people, at
“ their own charge, to build new ships, to
“ victual, and to pay them, for the public;
“ nay, to furnish money to the crown for
I that

“ that purpose? what security either against
 “ the farther extension of this claim, or a-
 “ gainst diverting to other purposes the
 “ public money so levied? The plea of ne-
 “ cessity would warrant any other taxation,
 “ as well as that of ship-money; and it was
 “ difficult to conceive the kingdom in a si-
 “ tuation when that plea could be urged
 “ with less plausibility than at present; and
 “ if such maxims and such practices pre-
 “ vail, what has become of national liberty?
 “ What authority is left to the Great Char-
 “ ter, to the Statutes, and to that very Pe-
 “ tition of Right, which, in the present
 “ reign, had been so solemnly enacted, by the
 “ concurrence of the whole legislature?” *

Another objection to it's constitutional ex-
 istence is made, by saying, that it does not
 exist in the most arbitrary countries. But I
 believe there is little force in this objection.
 In France, confessedly the mildest of all
 arbitrary government, the fleet is manned by
 a procedure much more oppressive on the
 seamen than ours. Every seaman is obliged
 to register his name, and the ship in which

* Hume's History of England, Vol. VI. p. 318.

he serves. Being thus entered, he can never leave the service, or change his ship, without formal notice, and receiving leave, and without signifying the spot on which, should his service be at any time wanted for the public, he is to be found. To fail in any of these forms, brings on a severe punishment. To be sure, a set of men armed with bludgeons do not walk about the purlieus of the seamen, searching for those upon whom they are to execute their warrants; — but with them, as soon as the commission is issued, all the seamen are to fly immediately to the place of rendezvous: If they fail in this, they incur nothing less than the penalty of death. When this is understood, we are very willing to allow the objection, — Pressing, as it is practised by us, does not exist in arbitrary countries.

I come now to show, that it has always been in use in England, and I hope to show, that it has always made a part of the Common Law, and that it is as much recognised by the Statute Law as any institution can be, which does not immediately owe its institution to it. I hope to make it clear to the candid Reader, that it is coeval with our

government, and has been exercised in every period of it. And, in doing this, I shall accomplish the remaining part of the question, by showing that it has always made a part of the Common Law, and is clearly recognised by the Statute Law.

3d Point.

That it is legal.

I am now entering on the most difficult part of this little Essay. I hope I have shown to the Reader's satisfaction, that the impress of seamen, with respect to the hardships brought thereby on a particular body of men, is not repugnant to the original laws of a free society, or government: That in the period of refinement, which this nation has long since attained, and the particular circumstances of being a commercial state, which it has long enjoyed, personal service in the navy, in times of war, cannot be the obligation of any but of the lowest rank of men: — That personal service is a duty incumbent particularly on the seaman; and that, after every inducement is used to invite him to enter into the service of his own free accord, some mode of compulsion is still necessary. — I now proceed to show, that compulsion, otherwise pressing into the service, has, from time immemorial, been
an

an usage, and made part of the Common Law of this realm.

Persons unacquainted with the constitution of this kingdom, are apt to suppose that no establishment can have the force of law, unless it had been formerly, and in direct terms, passed into a law by the legislature. It is necessary to acquaint such persons, that the greater part, by far, of the laws of this kingdom lies in custom, and that no proof, but immemorial usage, can be given of their being laws. To instance one of the many striking examples of those laws, the course in which lands descend by inheritance is governed entirely by laws of this nature, and is not settled by any positive law, discoverable at this day. At first, it was not practised as it now is; but having been in some measure practised on a particular emergency, and found a salutary measure, it was repeated. This repetition produced another, perhaps with some amendments. In this course it proceeds till it's origin is forgot. This is, generally speaking, the process of the greater part of the laws of every country; for, in all countries, besides the body of written, or as we call it

Statute

Pressing Seamen, besides immemorial usage, repeatedly recognised by the legislature.

Statute law, there is a collection of unwritten usages, of equal force with these written laws, and which answer to what we call the Common Law. But the legality of impressing of seamen has the addition of one very strong circumstance of proof, which is wanting to many other parts of the common law; that it is very early taken notice of, and, in some measure, modelled by the acts of the legislature. This will be more fully shewn hereafter.

The Naval History of the Nations before the Arrival of the Saxons, not of Consequence, as to the Point in Question.

In regard to the state of the nation before the arrival of the Saxons, no facts, I apprehend, can be mentioned, and no reasoning allowed which can throw any light on this subject. In those days, every man was a warrior; compulsion, therefore, to personal service in military expeditions, was not only not necessary, but absolutely unknown. — The employment of tillage, and every other occupation which kept the party from the field, was detestable and ignominious in their eyes, and became, what things generally reputed hardships must in every state of society become, the lot of the lowest rank of life. — It is therefore needless to dwell longer on this part of our history: — This circumstance, however, should be attended to, so far as it shows the truth of our position;

position; that, in every state of society and government, and in every period of the British constitution, no system of equality ever can, or ever could, prevail; which kept the more disagreeable impositions and duties from falling on the inferior conditions of men.

The Saxons period of our history is more interesting, for many reasons, which it is here needless to mention. — It therefore may reasonably be expected from us, that we show that the spirit of their government was nowise contrary to the fact we are here attempting to prove. This negative argument is as much as the distance of time, and the advanced state of our present system of government requires.

Summary of the
Naval history of
the Saxons.

Alfred, the father of our shipping, manned his fleet at first with seamen who had served with the Friscan Pyrates *. The arts of navigation improved considerably, and long voyages were attempted frequently both in his and in his successors reigns. In the reign of King Athelstan, a law passed, that every merchant, who had made three long voyages by sea, should be admitted to the

* Aferius, p. 13.

rank of a thane *. The writers of those times describe the magnificence of King Edgar's fleet in terms to which posterity has refused belief †. King Ethelred, on a sudden invasion of the Danes, ordered every person possessed of 310 hides of land to furnish a ship for the defence of the state ‡. And a tax of a shilling was imposed on every acre in the kingdom. This tax is known in history by the name of Danegelt ||. The money arising therefrom was employed sometimes in raising forces against, and sometimes in purchasing peace from, the Danes. Perhaps Mr. Selden was right in supposing, that some part of this tax was expended annually on a fleet purposely equipped to resist the invasions of that formidable enemy **. Other taxes were raised for the same purpose. The right of personal service included generally personal attendance in all naval expeditions. The sovereigns of the islands circumjacent bound themselves, by their oath, to

* Wilkin's *Leges Saxon.* p. 71.

† Some accounts make the numbers of his ships 300, others 3000, others 3600, others 4000. See *Hoved.* p. 426. *Flor. Wig.* 607. *Abbas Reival.* p. 360. — See *Brompt.* and *W. Thorn.*

‡ *Chronic. Sax.* p. 136.

|| *Ibid.*

** See *Mare Clausum.* 2d Vol. tom. 2. edit. Wilkins, p. 1316, 17, 18, 19, 20, 21, 22, 23.

King Edgar, to do him service both by sea and land. From the accounts of those times it appears, that some lands were particularly held by a kind of sea-service. In the book of Domesday mention is made of places bound to find the King with seamen, with iron for his ships, with horses to carry the armour of the soldiery to their ships, and with provisions, money, and armour, fit for the use of the fleet *.

I believe this will be found an exact, though concise, account of naval transactions, in the time of the Saxons. As it is a matter of doubt whether the feudal law obtained in England in those times, I shall postpone, for the present, making any observations on the general nature of feudal

* See Selden *locis ante citatis*, and the book of Domesday. *Glocestrie, tempore Edwardi Regis, reddebat 36 dicras ferri, et centum virgas ferri, duces ad clavos navium regis. Ledecestrie reddebat si Rex per mare in hostem ibat 4 equos, de eodem burgo usque ad Londoniam, ad comportanda arma, vel alia quæ opus essent.*

Warwick si Rex per mare contra hostes suos ibat, vel quatuor Batrucias, vel quatuor libras denariorum, mittebat.

Batrucius denotes such Mariners as belong to boats which have no sails. *Buscarlus*, often mentioned in the same book, refer to Seamen in larger vessels.

law. — I shall only observe that it is agreed, on all hands, that if fiefs were not at that time known in England, the great principle of the feudal law, the reciprocal obligations of protection and defence, and something very like the patronage and clientage of the feudal law, did at least prevail. And that this took in naval, as in all other concerns, we have Selden's express testimony; who calls them, *Clientum fiduciariorum officia navalibus expeditionibus, et maris tutelæ illo ævo expensæ*; — and *clientum officia ad rem nauticam, seu maris tutelam attinentia*. The duties of fiduciary clients, performed in those ages in naval expeditions, and in the custody of the sea; — and the duties of clients belonging to naval matters, and the custody of the sea *.

The Custody of
the Sea.

One of the chief prerogatives of the King of England, and a prerogative mentioned in very express and very pompous terms by antient writers, is “The custody of the sea.” The King is frequently stiled, the “Sovereign Lord and Proprietor of the Seas;” and the custody or guardianship of the sea, and the havens and

* Selden opere ante citato, p. 1323.

ports of this island, is mentioned as one of his most splendid prerogatives, and most important duties. For the execution of these offices, he was intrusted with ample powers*.

The Cinque Ports were more particularly and immediately under his care. They were governed by an officer appointed by him, called a Lord Warden, who had the jurisdiction of the admiralty in them, and was exempt from the admiralty of England. The merchants were in such estimation, and thought of such importance, that they enjoyed very great privileges, and were admitted to the highest honours. They had the appellation and honours of a Baron, were exempted from the feudal servitudes and prestrations, and could be sued no where but in their own Courts. In return, they were bound to find the King a certain number of ships, properly equipped and manned, and to keep them at their own expence for a certain time. They were also called upon for these services, on particular emergencies.

* What the Custody of the Sea was, is amply discussed by Mr. Selden, *Opere ante citato*.

“ Their particular franchises were granted
 “ them (says Lord Coke †), partly by an-
 “ tient parliaments, and partly by antient
 “ charters, and were confirmed by express
 “ name, by the Statute of *Magna Charta*.”

The records of our nation, from the time of the Conquest, afford the most striking proof of the truth of the assertion contended for in these sheets. The prerogative of the Crown, of being the Lord, and having the custody of the Seas, is everywhere recognised, and mentioned in the most pompous phrases. The territories of the Crown in Normandy made it necessary for our kings to cross the seas frequently ; — and, as a royal voyage was seldom made without a numerous company of attendants, a large number of ships was always ready, or at least always in a situation of being ready at command, to take the King and his attendants over. Our Norman territories, therefore, our wars with France, the Crusades, and the rising state of commerce, by degrees extended our navigation, and increased the number and size of our fleets.

† 4th Inst.

But, till a very advanced period of our history, the Crown of England never possessed, properly speaking, one ship of it's own. The ship called the *Great Harry*, on which King Henry VII. expended no less a sum than £. 14,000, was the first ship that, with propriety, could be said to belong to the Crown *. Till that time, the Crown had no other fleet but the ships with which they were supplied from different places, and particularly from sea towns, and haven towns, in consequence of their tenure.

The Court of Admiralty, if it did not exist under that name, certainly existed, at least in a great measure under another, very soon after the Conquest. The powers of the admirals were very extensive. In the reign of Edward III. perhaps much earlier, the Court of Admiralty assumed a regular form, and the office of Admiral became an office of more importance, and consequently more an object of the ambition and wishes of the great men of the realm, than it was before. Among other powers inherent to the office,

* See Mr. Afton's Preface to the Will of Henry VII.

pressing ships and mariners was not the least considerable. — Every merchant, when called upon, was bound to supply the state with ships; every mariner was, in the same manner, bound to do personal service. The admiral had every power necessary to compel both the merchants and the mariners to the performance of this obligation. He could chuse his men, arrest them, and detain them, for the service. His orders for this purpose were conveyed to him by writs. These, sometimes, mentioned the particular number of ships and men to be arrested, and the particular places from which they were to be taken. At other times, they ordered a general impress of ships and men to be made throughout the realm.

The writs were also directed to different places, and addressed to different persons. The men and ships thus arrested, were either such as were bound by tenure, or hired. In the latter instance, the use of the ships were paid for, and the men received wages; but the distinction is not made in the writs. The writs are worded generally, and never particularly specify only such ships and men as are bound by tenure.

If

If this state of facts be true, the legality of pressing, and it's having been from time immemorial a part of the common law of this realm, is proved to the highest point of demonstration that any historical point is capable of receiving.

The proofs of our assertions, on this head, are taken either from the mandatory writs and commissions from the Crown, ordering impress of men, or from acts of the legislature, in which this right of the Crown is more or less recognised.

It is to be observed, that there are no records in the Tower (except some antient charters, or exemplifications of them) more antient than the reign of King John: All of them from the reign of William I. till then (except some few in the Exchequer, not relating to Parliament,) being utterly lost *.

We

* Prynne's Preface to Cotton's Abridgement of the Records in the Tower.

There are few instances of a book being printed with so false a title, or executed more inaccurately.

We must, therefore, begin our proofs from the reign of King John *.

In

1mo. It should not be intituled an "Abridgement of the Records in the Tower," but of the "Rolls of Parliament, and Summons to Parliament;" there being several records in the Tower, not only not abridged in, but in nowise relating to the subject of, that work.

2do. Mr. Tyrell asserts, in the Preface to the Third Volume of the History of England, p. 9. that it was not the work of Sir Robert Cotton, but of Mr. Bowyer, keeper of the records in the Tower during the latter end of Queen Elizabeth's reign, and the beginning of James I.

An accurate Abridgement of the Rolls of Parliament, with a Summary of the History of the Kingdom prefixed to each reign, would be a most invaluable work.

* Though it be not here the place to enter into a discussion of the original form and constitution of parliaments, is necessary to premise some particulars on this head.

It seems to be universally allowed, that the proceedings of the legislature, till the reign of Edward I. were exceedingly irregular, and greatly defective in point of form. They are sometimes penned so as to appear to come from the King alone; sometimes, as issued jointly by the King and Lords; sometimes the assent of the Commons is, and sometimes it is not, expressed. Sometimes the authority for the passing the acts is mentioned; and sometimes the Acts are in the form of Charters. — I mention this, in order to answer any objection which may arise, in the Reader's mind, against the authorities I shall quote, from their seeming informality.

The first summons of the Knights of Shires to Parliament, extant on record, is in the 49th year of Henry III.

The

In the Reign of King JOHN,

Orders are given for arresting all ships that should be found on the sea *.

Orders to forbid any ship or vessel to leave the ports, without special leave from the King †.

The first regular summons directed to the sheriff for the election of Citizens and Burgeſſes, is in the 23d of Edward I.

In this reign the proceedings of the legislature assumed a more regular form ; — but far removed from that in which they appear at present. The consent of the Commons to the levying of taxes for the King, gave them great weight. They took advantage of this circumstance to obtain a remedy for the grievances they had to complain of.

In the reign of Edward III. the mode of presenting their petitions, and of receiving their answers, was regularly practised. If the petition and the answer to it were of such a nature as to require an express and new provision to be made for it, the King, with the assistance of his Council and of the Judges, framed, from such petition and answer, an act which was usually entered on the Statute Roll. But, if an express and new provision were not required, the Petition itself, and the King's Answer to it, were entered on the Parliament Roll, and was usually filed an Ordinance.

Alterations and improvements gradually took place. But it was not till the reign of Henry VI. that these petitions of the Commons were reduced, in the first instance, into the body of the bill.

* Pat. 9th John, Memb. 3.

† Pat. 6th John 11.

Writs are issued, ordering all ships, that could carry six horses or more, to be sent to Portsmouth *.

Writ addressed to the Barons of Rye, ordering them to assemble (*venire faciatis*) ALL the † ships at the Cinque Ports ‡.

In the case of ship-money, Sir George Crooke (who argued for the illegality of the measure) cites 6 John, M. 1. 3 John, M. 3. 17th John, M. 7. — Three of these are to arrest, and make stay of ships, that they should not go out of the kingdom, but be ready for the King's service; and the other was to bring ships of particular towns to the mouth of the Thames, for the King's service §.

A commission is granted to John Marshal, to guard the seas; and to the sheriff of the county of Lincoln, and to all others, to attend his commands ||.

* Rot. Claus. 14 John, M. 6.

† This is remarkable, as the number of ships with which the Cinque Ports were to supply the King was limited; an order for the service of ALL the ships there, shows that they were sometimes called upon to do duty *extra debitum*. This observation is made by one of the Judges in the Case of Ship-money.

‡ Rot. Claus. 7 John, M. 7.

§ 19 John, m. 4.

|| See Molloy, Vol. I. 133.

The King's writ to the bailiffs of all the ports in the county of Essex, to assemble (*venire faciatis*), at Portsmouth, all the ships of their bailliwick which could carry eight or more horses, by the Feast of St. Hilary, or before, ready and prepared to go into his service *.

Though the point immediately before our consideration be to shew the right of impressing seamen, we equally notice the right of impressing ships, and some other of the most remarkable instances of the different powers exercised by government in naval affairs. — But they equally tend to show it's supreme authority and jurisdiction, in all naval concerns, and what ample rights were inherent and annexed to the custody, or guardianship, of the sea.

In the Reign of HENRY III.

Orders for finding ships for the King's passage †.

The King's letters to the Viscounts of Cornwall, Devonshire, Dorsetshire, Somer-

* 15 John. Rymer, vol. i. 180. — The great Charter of King John is dated the 15th of June, 1275, Anno Regni 17.

† Pat. 13 Hen. M. 1.

setshire, Suffex, Kent, Norfolk, Suffolk, Essex, Hertfordshire, Lincolnshire, and Yorkshire, to take surety from the ships capable of carrying 16 horses or more, to be at Portsmouth on Easter, and on their giving this surety, to permit them, in the interim, to go where they pleased *.

The King writes to the Viscount of Dorsetshire, that the two persons therein named had come to him, at Portsmouth, with their ships; but not having occasion for them, he had given them leave to return †.

The Barons of the Cinque Ports swore, that all ships which are in their ports, or coasted there, should be at Portsmouth at a certain day, ready to do service to the king ‡.

Orders for arresting all ships proper for the service there mentioned ||.

Orders for the bailiffs of Dunwich to send to Dover five ships, well armed, with as many men as they could find, to do whatever

* Claus. 14 Hen. 3. dorf. Confirmile, ibid. m. 17.

† Claus. 14 Hen. 3. m. 8. dorf.

‡ Pat. 14 Hen. 3.

|| Claus. 17 Hen. 3. m. 7. — Claus. 26 Hen. 3. — Pat. 9 Hen. 3. No. 11,

the Constable of that place should order them *.

The men of Yarmouth are ordered to appoint three of the best ships belonging to their town, with six boats and one galley, and to equip and arm them well with men and arms. William Ross and Robert Tuckill are appointed captains. The profits of the expedition to be divided between the captains and their men, and the King, in equal portions †.

The bailiffs of Lynne are ordered to permit one of the four ships arrested by the King, to be taken by his ambassadors to Norway ‡.

In the Reign of EDWARD I.

A writ directed to the sheriffs of Norfolk and Suffolk, reciting that certain constables were appointed to assess men at arms sufficient for the guarding of the sea-coasts, commanding them to distrain, and compel, those so assessed to go ||.

* Claus. 26 Hen. 3. et simil. pluribus aliis.

† Claus. 26 Hen. 3.

‡ 18 Hen. 3. m. 4.

|| 25 Edw. m. 5. —Cited by Crooke in the Case of ship-money.

Writs to the sheriff of Lincoln, York, and Northumberland, reciting that he had commanded persons to collect and take 100 ships between Leigh and Berwick, and to man them with able men, commanding them to assist therein *.

Writs ordering different persons to attend for the defence of the sea-coast †.

A writ out of the Exchequer to the sheriff of Berks, reciting that the King was informed that the men in the county of Berks, who were assigned to come to defend the sea-coast, came not as they were warned; commanding to distrain them, and to compel them to come and do service. — The like writs were then awarded to the sheriffs of Wilts and Southton ‡.

The King taking notice of the preparations made by the King of France, commands all the ships and men with arms, in the kingdom, to be in readiness ||.

* 24 Edw. 1. m. 17. Ibid.

† Ibid. M. 16. Ibid.

‡ 24 Edw. 1. Rot. 78.

|| 23 Edw. 1. m. 4. cited by Crooke.

In the Reign of EDWARD II.

The King having commanded all ships of a certain size to be at Portsmouth, the masters and mariners complained that they could not serve without wages; — he, therefore, appointed them wages *.

Orders for appointing seamen †; — for arresting and taking ships ‡; — for punishing delinquent seamen §; — for giving every ship of a certain weight a double equipment ¶; — and that all the owners of such ships should be on board thereof in their own persons †.

Writs appointing certain commissioners to require the communities of the towns, cities, burrows, and ports of Norfolk, to send in their number of ships armed with men **, and the same for the other counties.

* Claus. 20. Edw. 2. m. 8.

† Rot. Scot. 7 Edw. m. 8.

‡ Ibid. M. 6. M. 2.

§ Ibid. M. 6. dorf.

¶ Claus. 20 Edw. 2. m. 12. dorf.

† “Equip. esquipementum. — De l' Allaman Schiff, qui signifie un navire. Equipage, c'est le corps ou le troupe des officiers, mariniere, des soldats, et des matelots, qui montent un vaisseau.” Menage Dist. Etym. Ed. 1750, p. 543. See also Carpent. Supplem. Gloss. Du Cange. sub verb. Esquippare.

** Rot. Scot. 11. 12 Ed. 2. m. 8. et dorf. m. 13. et m. 8.

ON THE LEGALITY

Orders to Alexander Claving, the Viscount of Norfolk and Suffolk, and Alexander Conners clerk, jointly and severally, to arrest, and take, thirty-six of the best ships which could be found on the coasts of the said counties, and to appoint men to serve in them *.

EDWARD III.

The long reign of King Edward III. contains sufficient instances to show, that the naval establishment was such as I have described it.

These orders, and particularly those for arresting and taking men, are frequently repeated in this reign.

Orders that A. B. should have power to appoint 70 able mariners for the King's barge, called the Mary †.

Orders are given to the Mayor and Bailiffs of Southton, to furnish the owners and masters of ships of a certain weight, with men

* 7 Edw. 2. Rymer, vol. 3. p. 429.

† Rot. Scot. 1 Edw. 3. M. 8.

and

OF IMPRESSING SEAMEN.

and all other necessities *. Orders that all men and ships of war be ready at Portsmouth †; — for arresting ships, and appointing the men to man them ‡.

Orders are given for taking mariners for the ships of the King §.

For taking and arresting ships.

For taking seamen.

For arresting carpenters, for the works of the engineers of the King ||.

For taking mariners for the use of the King †.

For arresting ships ‡.

For arresting ships and mariners **.

For appointing, taking up, and arresting ships and mariners ‡‡.

For taking up mariners and bowmen, for the armament of the navy ††.

All these writs are very frequently repeated throughout this reign.

* Cl. 2 Edw. 3. m. 22. dorf.

† Vaf. 1 Edw. 3. Rot. 27.

‡ Scot. Rot. 10 Edw. 3. m. 12.

§ 29 Edw. 3. Rot. Fra. m. 13.

|| Ibid. 12.

‡ Ibid. 9.

+ 31 Edw. 3. ibid. m. 15, 16, 17.

** 32 Edw. 3. ibid. m. 10.

‡‡ 33 Edw. 3. ibid. Pat. per tot.

†† Ibid. P. 2. m. 18.

There are also frequent writs for taking the ships out of the arrests.

The two admirals are impowered to make choice, as well within liberties as without, of men fit for the service, and to put them on board the fleet*. The commissions of the admirals impower them to assemble all kinds of ships, and to chuse and take mariners, and to put them on board†.

In the 47th of this reign, a very curious transaction happened.—The owners of ships throughout the kingdom petitioned that their ships were oftentimes arrested to serve the King, and continued for some time under this arrest before they went on their voyages, so that neither they nor their mariners got any wages. They begged the King and his council as a work of charity, to order that they might be paid from the time of the arrest. The answer was that no arrest of ships should be made but when it was wanted, and payment should be made as theretofore. They also begged to be allowed for the tackling of the ships. The answer made them

* 4 Rymer, 727, and Rymer, 3, 6. Ibid. p. 83, and 84.

† 7 Rymer, 127, and 128.

was, that no such allowance had been before made them *.

But not a word is said, not an insinuation conveyed, against the practice itself.

RICHARD II.

In the 2d year of Richard II. who succeeded Edward, the following remarkable act took place. “Whereas divers mariners, after that they be taken and retained for the service of the King upon the sea, in defence of the realm, and thereupon have received the wages to them belonging, do depart out of the said service without leave of the admirals, or of their lieutenants, to the great damage of the King our Lord, and of the realm, and delay of his said voyages: It is ordained and established, That all such mariners, who shall hereafter so do, and that are found and truly proved before the admiral, or his lieutenant, be obliged to restore to our Lord the King the double of what they shall have taken for their wages, and, nevertheless, be imprisoned for a

* Printed Rolls of Par. vol. ii. p. 319, 320.

“ year, without being delivered from thence
“ by any mainprize, bail, or by any other
“ way. And the King wills and commands
“ all sheriffs, mayors, and bailiffs, within
“ franchises and without, that, upon the
“ certificate of the said admirals, or their
“ lieutenants, by their letters thereupon to
“ be made, testifying the said proof, they
“ forthwith, without expecting any other
“ command of the King our Lord, cause to
“ be taken and attached all such fugitive
“ mariners, by their bodies, within their
“ bailliwicks within franchises and with-
“ out, and put them in prison, there to re-
“ main in good and safe custody, until they
“ shall have made satisfaction to the King as
“ afore is said, and thereupon have special
“ command of the King our Lord for their
“ deliverance. And that the same punish-
“ ment be inflicted on serjeants of arms,
“ masters of ships, and all others who shall
“ be attainted by enquiry before the admi-
“ ral, or his lieutenant aforesaid, of having
“ taken any thing of the said mariners for
“ suffering them to go at large out of the
“ service aforesaid, after they have been ta-
“ ken for the said service.”

In

In the same year, the commons petitioned the King in respect of the bad state of the navy. Their petition sets forth, That ships were too often arrested for the service of the King, and that the wages of mariners were too small, and prayed for redress. The answer was, that it should be as had been used *.

In the ensuing year, they presented another petition on the same ground, complaining of the long and many arrests of the ships without wages from the King.—The king, in his answers, declares what wages he wills them to have.—The regulation on this head to be in force till the meeting of the next parliament †.

In the tenth year of the same reign, the Commons prayed that, for the increase and maintenance of the navy of the kingdom, his Majesty would please to grant to the proprietors of the same ships the wages thereby specified. — The King answered, that he had laid this matter before his council ‡.

* Printed Rolls of Parliament, vol. iii. page 66.

† Ibidem, page 86.

‡ Ibidem, p. 233.

This deserves particular attention, as it shows, that the navy of England was, at least partially, composed of ships, the possession and ownership of which belonged to individuals.

Four years after the commons set forth, in petition, that the possessors of ships and mariners demanded exorbitant wages for public service, and much higher than they demanded in the preceding reign, and confederated with one another for this purpose. They therefore begged that it might be lawful for the bailiffs and mayors of the towns where these delinquent mariners should be found, to punish them at the suit of every person aggrieved by their behaviour. The King tells them he would charge his admirals that the mariners should have reasonable wages for their service and labour, and to punish them if they took otherwise *.

From this act we may fairly argue, that the state had, by common law, a right to the service of merchant-men and mariners; otherwise they certainly might demand what wages, or, in other words, offer what terms

* Printed Rolls of Parliament, Vol. iii. p. 283.

they

they pleased, for their labour. Besides, by the wording of the petition, and of his Majesty's answer, it seems that the remedy prayed for was, that the bailiffs and mayors of towns might be impowered to punish the mariners hereby complained of; and that this power was already in the admirals.

Orders are given for arresting both ships and mariners *; for assembling (*venire faciatis*) all the mariners †; for arresting ships ‡; for arresting ships for the passage of the Duke of Brittany ||; for arresting both ships and mariners through the kingdom §. A writ to serjeants at arms, to arrest all the ships of war in the ports of Plymouth or Dartmouth, and of other ports in the county of Cornwall; and to bring them to Hunshooke, to go with the King's Majesty's ships **; for arresting all ships and mariners of the admiralty of the west ††. The King appoints Robert Hales, &c. admiral; and impowers and impowers him to collect together, as often as there might be occasion, ships and vessels of war, and to appoint, take, and

* 1 R. 2. parte 2da.

† 1 R. 2. m. 4.

‡ 3 R. 2. m. 26.

|| 3 R. 2. m. 30.

§ 7 R. 2. m. 37.

** 11 R. 2. m. 13

†† Rot. Franc. 9 R. 2. m. 18.

him

put on board of such ships, all mariners and others fit for such ships, and to chastise all mariners that should rebel against, or be disobedient to these orders *.

HENRY IV.

In the 6th year of the subsequent reign, the lords and possessors of the vessels of the kingdom of England prayed for certain wages to be paid to them, from the first day of their vessels being arrested for the service of the King, and that the said vessels might, when on their return, be brought, at the expence of the King, into their respective ports. The answer of the King was, " That the antient ordinances should " be adhered to."

Though the attention of the monarch we are now speaking of was almost entirely engrossed by civil commotions, and by the care of securing his possession of the throne against the house of the preceding king, the jealousy between France and England, at different times, made it necessary for him to

* 1 R. 2. Rymer, Vol. vii. 171.

prepare for defence, in case he should be attacked.

As the safeguard of the seas was an object of the highest consequence, it was necessary to provide for it in a proper manner. And as the merchants had been very loud in their complaints in the preceding reign, it was necessary, and, at the same time, very politic, for the monarch to provide for it in a manner agreeable to the subjects in general, and to the merchants in particular. This produced a singular transaction, which we shall relate very particularly, as we think it deserves the Reader's most serious attention.

In the 7th and 8th year of the reign of Henry IV. at a parliament held at Westminster, on the 5th of April, Mr. John Tynetot, speaker of the House of Commons, represented, that a treaty was then in agitation between the King and his counsel of the one part, and the merchants of England of the other part, respecting the safeguard of the sea; that it could not be at present concluded, on account of many difficulties which had arisen in the course of the treaty, and as the festival of Easter (when the House could not sit) was so near that it would be impos-

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sible

sible for Parliament to see the end of the affair; he therefore petitioned that certain members of the House might be chosen, and that it might be given in charge to them to treat upon these matters with the King and Council, and to finish them to the best of their power. In consequence of this petition, six commissioners were chosen for these purposes: And the treaty between them was as follows.

It begins, " This is the ordinance made in
" parliament, by advice of the Lords Spi-
" ritual and temporal, and Commons, in
" parliament assembled:

" That the merchants, mariners, and
" possessors of the ships of England should
" exert their power for the safeguard of the
" sea, with ships and other vessels, together
" with 2000 fighting men, sometimes more
" and sometimes less, for the defence of
" the sea." This was to hold to Michael-
mas twelvemonth; — and for this cer-
tain tonnage and poundage was allowed
them.

The merchants then asked to have privy-
seals and warrants, as often as there should be
occasion

occasion for them, and powers to appoint officers and controlers: *And that the said merchants, mariners, and possessors of ships, should have commissions, letters, and writs under the great seal and privy seal, as often as they should find occasion, as well to arrest ships and mariners, as for other things proper to be done for the custody of the sea.*

It was answered, That, for levying the aforesaid tonage and poundage, they should have every necessary order under the great and privy seal.

It was granted, that they should enjoy all prizes taken by them. — They also petitioned for £. 4000, to be advanced them, but the King tells them, he has it not to give them.

It was declared, that they should always have notice of the royal navy, of the enemy being out at sea, of the King's going against them, in case this should happen, and of any peace or truce that should be made.

It was also granted to them that they should name two persons to be admirals, the one for the south and the other for the north, with the usual powers of admirals.

It is, I believe, impossible to produce stronger proof of the assertion I am now attempting to prove, (that the Crown always had power to impress seamen by the common law) than this record. We see every rank of the state, the Crown, the Lords, the House of Commons, and the commercial body of the people, to agree in describing the arrest of men as things very well known, and as inherent to the power of Admiral. In the many complaints of the decrease of the navy, with which the rolls of parliament abound, there is not one against the impress of seamen. — There are many petitions for the increase of wages; that the ships were kept longer in arrest than necessary; but not a word, or even an insinuation, against the legality of arrests of ships or of men, either by the commons, who, during the last reign, indulged themselves in unwarrantable jealousies, in the present, in at least decent apprehensions of the King's prerogative; or by
the

the merchants, the persons immediately affected by it.

In consequence of the above transaction, Richard Clidero was appointed admiral for the south, and Nicholas Blackbourn for the north, and with the assent of the Crown assumed their offices.

Thereupon, by a writ * addressed to the sheriffs, mayors, bailiffs, ministers, lords, masters, and mariners of ships, and to all his subjects, as well without as within liberties; and reciting, in short, the above transaction; the King appoints Nicholas Blackbourn, the person named, by the merchants, admiral of the northern parts, with the full powers belonging to the office of admiral; — and particularly of collecting ships and vessels of war, whenever necessary, and of appointing, taking, and putting on board of them, all mariners and other persons necessary for such ships, and of punishing these who should rebel, or oppose them in so doing. And of doing all other things which of right, and according to law, belong to the office of admiral †.

* 7 Hen. 4. Rymer, vol. viii. p. 439.

† De Navigiis et Marinariis, pro ambassadoribus Franciæ arreslandis. Rot. Fra. 13, 14. H. 4. M. 12.

Afterwards

Afterwards the merchants, who had been thus appointed to keep the seas, represented the expences they incurred for the wages of many *gens d'arms*, armed men, archers, and mariners, and other necessary charges; they therefore prayed allowance for the same, and that they might be discharged from keeping the seas. — The King willed, that they should be discharged from keeping the seas; and the rest of their petitions he referred to his counsel to examine, with power to make any allowance they should think proper.

In the Reign of HENRY V.

The King appoints Lord Huntingdon his lieutenant, and orders all sheriffs, &c. and the lords, masters, and mariners of ships, to obey him; — but not to arrest any soldiers or seamen retained by John of Clifford, or Edward Courtenay*.

HENRY VI.

A writ directed to several persons, ordering them to arrest and take for the King's service, all ships, barges, and other vessels,

* 4 Hen. 5. Rymer, vol. ix. p. 344.

and

and also all masters and mariners that could be found in the ports therein mentioned, any royal letters of license theretofore granted to any person or persons notwithstanding *. Like writs are sent to the officers of all the port towns in the kingdom.

EDWARD IV.

Orders from the King to William Philpote master of a ship called Petyr of London, to arrest, take, and ship all mariners necessary for that ship, as well without as within liberties. The same orders are sent to five other masters of vessels †. The same orders are sent to eleven other masters of vessels ‡.

The King appoints Robert Radcliffe captain of his fleet, and orders him to arrest, take, and provide the same with ships and other vessels, and with mariners, masters of ships, soldiers, carpenters, &c. wherever found, except within the liberties of the church, and to ship them on board §.

* 11 Rymer, 21, 22.

† 15 Edw. 4. 12 Rymer, p. 5.

‡ 20 Edw. 4. 12 Rymer, 139.

§ 22 Edw. 4. 12 Rymer, p. 160.

HENRY VII.

Lord Willoughby de Broke being made commander of the fleet and navy, then going out on an expedition to France, he * and, in his lordship's absence, Sir Robert Poyntz †, has the same powers as we have before noticed to have been given to others, of arresting and taking up men, and punishing the refractory.

HENRY VIII.

The Duke of Richmond's commission contains similar powers of taking up mariners ‡.

PHILIP and MARY.

In the 2d and 3d year of this reign, an act passed, regulating the watermen and barge-men upon the river Thames ||. It is thereby

* 5 Hen. 7. 12 Rymer, 455.

† 8 Hen. 7. Ibid. 484.

‡ 17 Hen. 8. 14 Rymer, 42.

|| 2d, 3d, Phil. Mary, c. 16, 58.

enacted,

enacted, that all persons exercising the occupation of rowing between Gravesend and Windsor, who should secrete themselves, while the press warrants were out, and as soon as the press was over, return to their employments, should be imprisoned for two weeks, and be banished from rowing on the Thames for a year and day then next following.

We may properly infer from this act, that press warrants were in use at the time it passed. The offence hereby intended to be remedied, is the slightest of it's kind that can be committed; not a resistance to press-warrants, but merely a withdrawing to avoid becoming the object of their execution. We may also reasonably infer, that the practice in question had the countenance of the legislature in general. And that this statute, to use the expression of Lord Coke, was only in affirmation of the common law.

There also is a proclamation of the fourth of this reign, which recites, that diverse mariners and sea-faring men, lately pressed and retained to serve her Majesty, had withdrawn themselves from the said service, and inflicts on such offenders the penalty of death *.

* Coll. Proclam. vol. ii. p. 144. Penes Soc. Ant.

QUEEN ELIZABETH.

The statute of the 18th of Henry VI. c. 19. against soldiers leaving the service, by the 5th Eliz. c. 5. § 27. is made to extend against all mariners who take prest or wages. And § 41, it was enacted in favour of fishermen and mariners haunting the sea as fishermen and mariners, that none of them should be compelled to serve upon land, or upon the sea, otherwise than as a mariner, with the exceptions therein mentioned. — And, by § 43, that no fisherman should be taken by the Queen's Majesty's commission, unless the said commission should be first brought by her Highness's taker or takers, to two justices of peace next adjoining and inhabiting to the place where such mariner is taken, to the intent the said justices may chuse out, and cause to be returned, such sufficient number of able men, as in the said commission should be contained, to serve her Majesty.

I have heard it objected, that the first part of this statute makes against the legality of pressing, as the only mariners described to be within the statute of Henry VI. are such as have taken prest-money: Which

Which expression, it is said, supposes that those only are engaged to serve who have taken prest-money, which they say is synonymous to wages. Mr. Barrington, in his Observations on the Antient Statutes, seems to countenance this opinion. He derives the word *pressing* *, antiently spelt *impressing*, from the word *empresse*, which seems to imply a contract on the part of the seaman, rather than his being compelled to serve. With deference to the abilities, penetration, and extensive erudition of this valuable writer, I submit my humble opinion, that there is nothing in the meaning of the word *empresse*, which warrants the conclusion he has been pleased to draw from it. It has been before observed, that those who were not bound by their tenure to do sea-service, received wages for it. The mode of retaining them probably was by tendering them an advance of some part of their wages. It is not necessary to suppose, that when this advance was offered to them, their not receiving it kept them free from compulsion to the service. This tender they were at liberty to reject; but the moment it was made to them, whe-

ther they received it or not, they were equally marked out, and legally retained in the service. This seems to be very clearly signified in the other parts of the act.

In this reign pressing was very much in use. In the commission given to Sir Martin Frobisher, the Queen gives him power to press, and to take up, for her service, any mariners, soldiers, or other needful artificers; and requires all justices and other officers to be assisting to him therein *.

CHARLES I.

There is a temporary act of this reign, which authorises an impress by admiralty warrants. I refer the reader to what Mr.

* 31 Eliz. 16. Rymer, 22.

It must be admitted, that the parliament seems to recognize the Queen's power of pressing, by the 5th Eliz. 41. — Sir John Falstaff, in the First Part of Henry the Fourth, says, "I have misused the King's Press damnably;" speaking of it as a known practice. See Act iv. Scene 2. In the Second Part of this play, when Falstaff brings his recruits before Justice Shallow, it should seem that there were some temporary laws for raising men, as hath not been usual of late years. Barrington on the Antient Statutes, 338.

A Ferryman (if it be on salt-water) ought to be privileged from being pressed as a soldier or otherwise. See Rep. 11. Cit. *ibid*.

Justice

Justice Foster has said on this head; to the propriety of which nothing can be added. To give his sentiments in other language than his own, would be to do him and the reader equal injustice. To copy it word for word seems to me, at least, improper.—Indeed, if this Essay should have no other effect than causing *that* excellent treatise to be more universally read, it would answer the most sanguine of the Author's wishes.

In the year 1626, the Commons impeached the Duke of Buckingham. Among other charges brought by them against his Grace, he was accused of several malpractices in his office of high admiral. They accused him of neglecting to guard the seas. Mr. Selden managed this part of the charge. I beg to refer the reader to it, and that he should compare it with what the same learned gentleman writ a few years after on the guardship of the seas, in his work intitled *Mare Clausum*. Mr. Selden's speech is printed in his works, and is to be found very fully taken down in Rushworth. In the 6th article of the impeachment, the Commons set forth, that the Duke, on a certain occasion, moved the Lords assembled in parliament,

liament, whether he should make stay of any ships which were then in the ports, (as *being high admiral he might*) and namely the ships prepared for the East-India voyage ; which motion was generally approved by the whole House. — And, further on, they accuse him of having procured a ship of the royal navy to be appointed for the service of the King, and that seven other merchant ships were also impressed.

They proceed to complain of the use to which the ships so impressed were put ; and that, being apparently pressed for the service of the nation, they were afterwards, by management of the Duke, delivered to the King of France, or otherwise misapplied ; but there is not one single reflection on the article of pressing itself. They never once object to it as arbitrary, or an illegal practice.

In another work, written professedly on that side which is commonly supposed to be most jealous of the liberty of the subject, and said to be collected from the manuscript notes of the gentleman I have just mentioned, after a very learned and very accurate, though concise account of the jurisdiction of the
court

court of admiralty, it is said, " That the
" Lord Admiral hath power not only over the
" seamen serving in the ships of state, but o-
" ver all other seamen, to arrest them for the
" service of the state; and if any of them
" run away without leave from the admiral,
" or power deputed from him, he hath
" power, by enquiry, to make a record there-
" of, and certify the same to the sheriffs,
" mayors, bailliffs, &c. who shall cause them
" to be apprehended and imprisoned *."

The same doctrine is expressly laid down in the Case of Ship-money. The Reader who desires to understand perfectly the nature of the naval establishment of this country, in the more antient times, will have his curiosity amply satisfied, by perusing that valuable report. What was said by counsel, in arguing the case, and what was said by the judges who gave their opinion for the court, I shall here pass over: But as the part which was taken by Sir George Croke in this affair renders his testimony most unexceptionable, I shall here present the Reader with *his* sentiments on the subject before us.

* Bacon's Historical and Political Discourse of the Laws and Government of England, Part ii. p. 26.

Throughout

Throughout the whole of his argument Sir George, while he positively denies the Crown a right to charge persons for the building of ships, or to compel them to build ships at their own expence, allows, in the most express terms, it's right to employ the ships and the seamen of the nation in the public service, and to compel them into it. I shall cite the following as one of the many passages which might be selected for this purpose from his learned argument.

“ There can be no such necessity, or danger conceived, that may cause these writs
 “ to be awarded to all counties of England,
 “ to prepare ships at such a charge, and
 “ with such men and ammunition, without
 “ consent in parliament; for the laws have
 “ provided means for defence in times of
 “ danger, without taking this course: for
 “ that the King hath power to command all,
 “ or any persons of this kingdom, to attend
 “ with arms at the sea-coasts, to defend the
 “ coasts, or any other parts of the kingdom;
 “ and also by his officers, to make stay or
 “ arrest, all or any the ships of merchants,
 “ and others having ships; or as many as he
 “ pleaseth to go with his navy, to any parts
 “ of

“ of his kingdom, for defence thereof; and
“ to attend those to whom he appointed the
“ guard of the seas, or the sea-coasts, at such
“ times and places as they should appoint.
“ And this has been always taken and con-
“ ceived to be sufficient for defence, against
“ any prince whatsoever; and yet the same
“ was in times, when the navy of England
“ was not so strong, as now by the blessing
“ of God, and the good providence of his
“ Majesty, it is.”

In Scobell's Collection there is an ordinance of the 28th June 1659, intituled *An Ordinance to encourage Mariners, and to impress Seamen*: By this different encouragements are held out to mariners, to induce them to enter into the service, of their *free accord*: — And, by the last clause, it is ordained that all mariners, seamen, and watermen, who have served an apprenticeship of seven years, should be exempted from being pressed to serve as soldiers in any land service. This ordinance proceeds therefore on the principles, and with the measures, adopted in all naval well-regulated governments. It holds out to the seaman, the amplest bounty

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which

which the public purse can afford; and it leaves the tardy to the coercion of the press.

It is needless to require a stronger proof of the legality of the impress. If it can be proved that this measure has been, from immemorial time, in constant use, and never declared illegal, either by the legislature or by the judicial power, there certainly is the strongest presumption of it's legality: It ceases to be presumption, if it appear to be expressly recognised by the legislature; it becomes demonstration.

WILLIAM III.

By the 7th and 8th of this reign, it is enacted that licences should at any time be given, by order of his Majesty or the lord high admiral, or commissioners of the admiralty for the time being, to any landmen desirous to apply themselves to the sea-service, to serve on board merchant-ships or other trading vessels, which should be to them a protection against being impressed for the space of two years following, provided they could bring two persons to assert, upon oath, their being landmen,

landmen, with a penalty, in case they afterwards proved to be seamen.

We do not meddle with any right which the Crown may claim to impress landmen. The impress of men in general is here taken notice of, and is not censured. But the impress of seamen is also taken notice of, and tacitly allowed. For their being exempted for two years from the press, manifests that, without that exemption, they would be liable to it. This statute, therefore, by exempting a particular set of men, complying with some particular requisites, from the press, for a particular time, shows that there are other persons who are liable to the impress, and that the very persons included in the exemption are also liable to it, at the expiration of the time for which the exemption is granted, or on not complying with the requisites thereby specified. The same observation holds as to the remaining statutes which I shall have occasion to cite. I beg the Reader to observe, that this and the next statute were passed at a time when the prerogatives of the Crown were most ably and most minutely scrutinized.

In this reign the expedient of a voluntary register was attempted. The advocates for it employed one Hodges, to set forth it's utility in a pamphlet. But the expedient was found to be insufficient; and open, with respect to it's constitutional merit, to more objections than the impress itself.

QUEEN ANNE.

By the 1st Anne, session 1, c. 16, § 2. no harpooner or other foreigner is to be impressed. — 2d and 3d An. c. 6. Boys put out apprentices are not to be impressed till they arrive at the age of 18. Persons voluntarily binding themselves are not to be impressed for three years. — If, after that time, they should be impressed, their masters are to have able seamen's wages for them: And for encouraging the coal-trade, every vessel in the trade is thereby allowed to have one able seaman, besides the persons there specified for every 100 ton of the vessel, not exceeding 300 tons, free from *impressing*.

4 Ann. c. 19. On notice given by the admiral to the watermens' company, such watermen as do not obey the summons given them,

them, are to be imprisoned for one month, and be disabled for two years.

6 Ann. c. 31. § 2. Watermen belonging to the Insurance-offices are declared to be free from impressing.

In the succeeding reign, there are to be found several statutes, in which the impress of seamen is, more or less, mentioned as an usage of the kingdom, and recognized to be legal.

On the instances we have adduced we shall make no further comment * ; unless we very much misapprehend their nature, we think they

* The Author of these sheets is sensible, that the instances and citations which he has, in this section, brought before the Reader, might have been much more numerous, and much more judiciously selected. To many sources of useful information he had not access. Some he had not leisure to inspect. To those which he has consulted, he had not in his power to bestow necessary attention. As this apology, however it may excuse the defects of the performance, exposes him to the censure of obtruding, knowingly and willingly, a hasty work on the Public ; he begs leave to mention, That, when he first engaged in it, he was informed that the part of this disquisition which makes the subject of this section, was to have been executed by a person every way qualified to do it justice. With this persuasion he writ the first five sections. He was then informed, that he was not to receive the assistance, with the hopes of which he had flattered

they fully prove the point undertaken to be proved in this section, " That the impress of
 " seamen is a part of the common law, and
 " has

flattered himself on setting out. In the mean time, his manuscript had been shown, and a person whose approbation would give celebrity to any work, and whose rank gives his slightest desires the force of commands, was repeatedly pleased to commend the performance, and to express a wish of seeing it in print. Little sensible of what he was about to undertake, he promised to publish it. Nothing now remained for him, but to perform his promise; and, however faulty the execution of it may be, he would rather trust to the mildness of the Public censure, by producing an unfinished work for their perusal, than incur the animadversion of the individuals privy to this transaction, by retracting his promise.

To treat the subject as it deserves, a much larger field of inquiry should be opened, than the author of these sheets could venture upon. — It requires a mind already treasured with various literature, and every assistant help of books and retirement. If any person, thus circumstanced, should undertake to write on the subject, he would find it worthy his utmost abilities. — A plan of this nature was formerly sketched out by Mr. Anstis. I believe it will not be unacceptable to the Reader to see it in his own words.

" The collector of these notes, designing an account of
 " the antiquity, jurisdiction, and proceedings of divers
 " courts of this kingdom, and, among others of that of
 " the Admiralty, and having an intention of inquiring into
 " the nature, quality, and successive encreases of the sub-
 " ject matters properly cognizable in each court; as an
 " appendix to that of the Admiralty, among sundry other
 " dissertations thought that an Abridgement of all Records
 " relating to Shipping, might not be an unacceptable at-
 " tempt, therefore took references from time to time, that
 " when

“ has been often recognized by the statute
 “ law of the realm.”

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“ when he met with sufficient leizure, he might easily turn
 “ to such places as should be subservient to such a work,
 “ and is concerned that he took them so slightly; however,
 “ by this slender Essay, some few matters of curiosity will
 “ appear. He thought that an account of the shipping of
 “ the Antients, of their navigations and method of fighting,
 “ &c. was wholly foreign to the history of the Court of
 “ Admiralty of England, but those persons who desire sa-
 “ tisfaction therein, may find something wherewith to satis-
 “ fy their curiosity in the Authors following.

Baysius de Re Navali.

Salmas Exer. Plin. p. 264, 570, 1110.

Brodeus, lib. iii. misc. l. 4. c. 13. l. 1. c. 35. l. 5. c. 35.

Pithoeus, lib. 3. misc.

Petrus Nonnus de Arte Navigandi.

Snellius.

Opelius de Fahnna Frirem.

Meibomius.

Thomas Rivii Historia Navales, in 2 vols.

Varenius Geograph. c. 35.

Ricciolus Geographia Reformata, l. x. c. 11, &c.

Petrus Peckius.

Libinius de Navigiis.

Barthol. Morisot Orbis Maritimus.

This manuscript was lent to the Author by Mr. Asle of the Paper Office, and keeper of the Records in the Tower, to whom the literary part of this nation, and particularly those who apply to the study of it's constitution and antiquities, have the greatest obligations. His valuable library, and perhaps unequalled collection of manuscripts, were, upon this occasion, ever open to the Author's access. Of his counsel and assistance he may also boast. Whatever be the merit of this little work, justice requires it should be ascribed

The meaning of the words *capere*, *eligere*, *arrestandi*, as they are used in the writs here cited.

In the citations contained in this section, from the records of the kingdom, frequent use is made of the words *taking up*, *appointing*, and *arresting*. — The original words are, *capiendi*, *eligendi*, *arrestandi*, in Latin; — *prendre*, *elire*, *arrester*, in French. — Besides the obvious meaning of these words, and the import of their ordinary use, they have a peculiar meaning, when taken in a legal sense. In that sense they always carry with them an idea of coercion. — It is necessary to mention this, as it is pretended that, by the writs in question, nothing more was intended than to leave to persons to retain, or as we should call it, *to enlist*, soldiers. This must appear, on reflection, very far from their meaning. In the more early times, the word used to

ed to him. — The readiness, and the unassuming ease, with which he communicates his treasures to every person desirous of information, or to those whom he thinks capable of judging of their value, or likely to make them useful to the Public or to themselves, deserve the highest commendations. — There have been few publications during the course of these later years, in the above-mentioned branches of literature, the Authors of which do not confess obligations to him; — and do not speak in the same manner of the riches of his literary repertory, and his liberality in communicating its contents. Their sentiments, in this respect, they may deliver with more elegance; their characters may give them greater value; — but, as few have more obligations to him than the Author of these sheets, none exceeds him in esteem for his virtues, or in gratitude for his favours.

summons

summons a person to appear at trial was *capiō*. There are no writs more frequently mentioned in the antient law-books than the *cape magnum* and *cape parvum*. If the person who was summoned by these writs did not appear at the time appointed, he lost his lands concerning which the plea was *. The same inference lies from the writ *capias ut legatum*, and from every other writ where the word *capiō* is used.

Cāpere.

Eligere, in it's most obvious meaning, implies constraint on the person chosen. But, as most of the offices filled by election, and particularly that of a seat in parliament, are objects of ambition, we rather consider the election to them as a favour conferred, than as an obligation imposed. A moment's consideration of the many offices now filled by election, where election is synonymous with compulsion, and on the striking revolutions in the sentiments of mankind in respect of others, which, though now objects of the most important pursuits, were once objects of dislike, and, till even a late period, of the greatest indifference, will convince the Reader that the meaning of the word *eligendi*

Eligere.

* Bracton, lib. v. Trac. 3. c. 1. Fleta, lib. ii. c. 44.

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includes,

includes, besides the power of chusing, the power of *compelling* the persons chosen to obey. On the authority of a manuscript of Judge Yelverton, I have translated it by the word *appoint*.

Arrestare.

Arrestare naturally implies *compulsion*. In it's legal import it often implies detaining persons, or things, for the King's service. In the antient records of this kingdom, and in the civil law, from which many of our records are borrowed, it signifies detaining persons or goods in the hands of the King, or in his courts, till something that regards them, and then in dispute, be decided *.

Objection, That none were obliged to serve, but such as were bound by tenure, covenant, or contract, or were in prison for the King's debts.

Another objection, and the last that occurs to me, against the doctrine contended for in these sheets, is from the doctrine laid down by Lord Coke †, "That the King cannot press to serve in his wars: For that, of old, he was to be served either by those that held by their tenure, those that covenanted by indenture to provide men, those who contracted with the King's officers for wages, and entered into pay, or those that were in prison for the King's debts.

* C. 2. de Crim. fal. et relegatorum, ff. de interdict. et rele.

† 1 Inst. 71.

Answer.

In answer to this objection, I presume, with the utmost respect for Sir Edward Coke's name, it may be asserted with confidence that, without detracting from his character as the first common lawyer that ever appeared, his merit as a parliamentary, or constitutional author, or as a person versed in records, tho' very considerable, carries with it a far inferior degree of weight. Upon an attentive examination of the constitutional records of this kingdom, the above account of the King's right to impress will be found very inaccurate. But as to the right of the King to impress landmen, we have before declared that we do not, in these sheets, pretend to examine it. Should we admit it to be as it is here represented, yet, after the continued chain of instances we have shewn of the right of the Crown to impress seamen, it rather becomes matter of curiosity how the Crown should exercise a right of impressing seamen, when the right of impressing landmen was denied it.

Whoever considers attentively the nature of the feudal polity, will find a striking difference in the situation of landmen and seamen. The chain of subordination, which

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cemented

Difference between landmen and seamen.

The commercial part of the nation was not within the chain of feudal subordination.

cemented together the different ranks of the former, is well known, and not more accurately described at present than it, formerly, was sensibly felt. The commercial part of the nation was not, properly speaking, among the links of this regular system of subordination. That branch of Naval Men, who were immediately employed in the service, and in the occupation, of Commerce, looked up *immediately*, generally speaking, to the King, as to their sole and immediate sovereign, expecting protection *immediately* from him, and doing service *immediately* to him; and not mediately, as the rest of the nation did, through the long line of the feudatory connections. The inattention of all feudal nations to commerce, left this set of men immediately to the Crown. This, therefore, would naturally give him more absolute power over them, than he could exercise over any other particular set of men in the nation *.

The commercial interests of the nation more attended to by our sovereigns than by the barons.

It has been frequently said, that commerce was more attended to by the sovereign than by any other of the ruling powers of this nation. It certainly was more encouraged by him than by his barons. Finance was, in those days,

* See Racon's Discourses, 2d Part, page 24, 25.

but

but little understood.—It was not, perhaps, till very late, that it was generally conceived, how much the wealth and strength of a nation is assisted by the commercial acquisition of individuals.

Military glory being, in those days, the sole object of ambition, military employment was of course the sole pursuit. Nor could the baron, who met his sovereign in arms, conceive much estimation for those who cultivated the peaceable employments of commerce. To him *their* occupation appeared the extreme of indolence and cowardice; the greatest, if not the only vices in his eyes;—and the most opposed of all to those qualities which give him importance.

The barons held commerce and its followers in contempt.

Meanwhile the commercial people grew up in silence and obscurity, acquired strength, by degrees, and insensibly obtained a regular and durable establishment. Acting, at first, by the mere virtue of their own natural powers, they derived force from the inattention which was at first shewed to them; They extended and improved to an amazing degree, the advantages which they received; and finally raised on the ruins of some of the most

Meanwhile commerce spread and improved.

most splendid prerogatives of the crown, and the aristocratical combinations of the nobility, a new power in the constitution, and formed a new object of national interest.

The Kings used the help of this body of men naturally presented them, and connected themselves with them against the barons.

The sovereigns of all nations observed, and used, the assistance they naturally presented them, in humbling their nobles. In Italy, where the power of the sovereign was small, many of the cities and communities, in which commerce prevailed, acquired independance. In France and in England, they joined the Crown, against their common enemy, the imperious barons. As the Crown was the first that protected them, for a long time after, they looked up to it as to their immediate support. — The sovereign, in return for the protection he gave them, claimed their assistance. This union was still more cemented by the antient prerogative of the Crown, so immediately favouring, and so intimately blended with navigation and commerce, of having the custody of the sea. We have before observed, that the Crown had not any ship of it's own till a very late period. Those who were bound to serve by tenure, were not adequate, either in number or by their complement of men, to the views of the nation.

The Crown's prerogative of having the custody of the sea, cemented strongly this connection.

tion. The only resource, therefore, was by using the ships of the merchants. — These circumstances conspiring together, makes it very easy to account for any right which the Crown uninterruptedly exercised over seamen, though no instance could be adduced of it's exercising a similar right over the landmen. — But, whatsoever cause we may assign for the rights of the Crown in this particular, it certainly was such as we have represented it to be.

I shall conclude this Essay with a quotation on this subject from Mr. Hume, which bears the strongest marks of that penetration and depth of thought for which he has been so highly celebrated.

Mr. Hume cited.

“ The *third* custom, which we propose to
“ remark, regards ENGLAND; and though
“ it be not so important as those which we
“ have pointed out in ATHENS and ROME,
“ is no less singular and unexpected. It is
“ a maxim in politics, which we readily
“ admit as undisputed and universal, that a
“ power, however great, when granted by
“ law to an eminent magistrate, is not so
“ dangerous to liberty, as an authority, how-
“ ever inconsiderable, which he acquires from
“ violence /

" violence and usurpation. For, besides that
 " the law always limits every power which
 " it bestows, the very receiving it as a con-
 " cession establishes the authority whence it
 " is derived, and preserves the harmony of
 " the constitution. By the same right that
 " one prerogative is assumed without law,
 " another may also be claimed, and another,
 " with still greater facility; while the first
 " usurpations both serve as precedents to the
 " following, and give force to maintain them.
 " Hence the heroism of HAMPDEN's conduct,
 " who sustained the whole violence of royal
 " prosecution, rather than pay a tax of twen-
 " ty shillings, not imposed by parliament;
 " hence the care of all ENGLISH patriots to
 " guard against the first encroachments of
 " the Crown; and hence alone the existence,
 " at this day, of ENGLISH liberty.

" There is, however, one occasion, where
 " the parliament has departed from this max-
 " im; and that is, in the *pressing of seamen*.
 " The exercise of an irregular power is here
 " tacitly permitted in the crown; and tho'
 " it has frequently been under deliberation,
 " how that power might be rendered legal,
 " and granted, under proper restrictions to
 " the

“ the sovereign, no safe expedient could ever
“ be proposed for that purpose ; and the dan-
“ ger to liberty always appeared greater from
“ law than from usurpation. While this
“ power is exercised to no other end than to
“ man the navy, men willingly submit to it,
“ from a sense of it's use and necessity ; and
“ the sailors, who are alone affected by it, find
“ no body to support them, in claiming the
“ rights and privileges, which the law grants,
“ without distinction, to all ENGLISH sub-
“ jects. But were this power, on any occa-
“ sion, made an instrument of faction, or mi-
“ nisterial tyranny, the opposite faction, and
“ indeed all lovers of their country, would
“ immediately take the alarm, and support
“ the injured party ; the liberty of ENGLISH-
“ MEN would be asserted ; juries would be
“ implacable ; and the tools of tyranny, act-
“ ing both against law and equity, would
“ meet with the severest vengeance. On the
“ other hand, were the parliament to grant
“ such an authority, they would probably fall
“ into one of these two inconveniencies :
“ They would either bestow it under so ma-
“ ny restrictions as would make it lose it's
“ effect, by cramping the authority of the
“ crown ; or they would render it so large
“ and comprehensive, as might give occasion

“to great abuses, for which we could, in
 “that case, have no remedy. The very ir-
 “regularity of the practice, at present, pre-
 “vents it's abuse, by affording so easy a re-
 “medy against them.

“I pretend not, by this reasoning, to exclude
 “all possibility of contriving a register for sea-
 “men, which might man the navy, without
 “being dangerous to liberty. I only observe,
 “that no satisfactory scheme of that nature
 “has ever been proposed. Rather than a-
 “dopt any project hitherto invented, we con-
 “tinue a practice seemingly the most absurd
 “and unaccountable. Authority, in times of
 “full internal peace and concord, is armed
 “against law. A continued violence is per-
 “mitted in the crown, amidst the greatest
 “jealousy and watchfulness in the people;
 “nay proceeding from these very principles:
 “Liberty, in a country of the highest liberty,
 “is left entirely to its own defence, without
 “any countenance or protection: The wild
 “state of nature is renewed, in one of the
 “most civilized societies of mankind: And
 “great violence and disorder are committed
 “with impunity; while the one party pleads
 “obedience to the supreme magistrate, the o-
 “ther the sanction of fundamental laws.”

A P P E N D I X.

NUMBER I.

The Writ addressed to the Barons of Rye, cited page 74, being by mistake not truly quoted, nor fully stated, it has been thought proper to print it here at length.

Cl. 17 Jo. m. 7. dorſe.

Rex, baronibus ſuis de Rya ſalutem. Mandamus vobis quod in fide qua nobis tenemini, et ſicut omnia veſtra deligitis, ſtatim, viſis litteris iſtis, omni dilatione et occasione poſt poſitis, venire faciatis, uſque in os Thamesie, omnes naves que in receptione litterarum iſtarum, in portu veſtro invente fuerint, et in eis quatuor de melioribus hominibus ville veſtre de diſtrictu et aperte nobis ſcire faciant, quot naves illuc venerint, et quales, et quorum ſint, et de illis navibus, quæ ad preſens in portu veſtro invente non fuerint, et de villa veſtra ſint. Similiter nobis ſcire faciant quorum illi fuerint, et quot, et quo ierint faciatis etiam, omnes naves, que poſt ſuſceptionem litterarum iſtarum in portum veſtrum venerint in os Thamesie ſine dilatione transmitti numerum illorum, et quorum fuerint nobis ſignificatis. Teſte Rege apud Rading, 13tio die Aprilis.

Eodem modo ſcribitur de (1) Gipewic, (2) Gernem. et Norwic, Orewell, Oreford, Sca Oſtha, Sandwic, Dover et Haſtings, (3) Heda, (4) Rumenel, et (5) Wincheſt. (6) Sorham,

(1) Ipſwich.

(2) Yarmouth.

(3) Hythe.

(4) Romney.

(5) Wincheſter.

(6) Shoreham.

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Porteſm.

Naves.

Homines.

Portesm. Sutht. Exon. Bristoll, Boscham, Pevenesey, Dunwic. Lenn. — Teste ut supra.

The Writ was directed to all the above-mentioned places, as well as to the Barons of Rye.

NUMBER II.

The following is an Extract from the Black Book of the Admiralty, p. 26, 27. 12 Ed. 3. as it is cited and commented on by Mr. Molloy, vol. i. p. 133.

P. 26 and 27.
6 Joh. m. 11.
9 Joh. m. 3.
24 E. 2. m. 17.
31 R. 2. m. 13.
Rott. Franc.

By the Laws of *England* there is no question, but the King may seize, and it appears by very many ancient Records, that he might do it, and it was one of the Articles of Enquiry amongst others; “Item, soit enquis de Nefs, que sont arrestees pour le service du Roy, ou pour autre raisonnable cause per les Officers du Roy, ou de l’Admiral, et debriſent l’Arrest, et par les quelles avandictes Nefs sont emmenez, et retamer les Mariners qui sont ordonnez pour le service du Roy, et si retracent, et en cas que homme soit endite qui la debruse l’Arrest en sa Nef arrestee pour le service du Roy, et de ce soit convicte par xii. il perdra sa Nef si’il na grace du Roy ou du hault Admiral, et pour ce quil a este plusieurs fois debatue en Angleterre pour les arrestes des Nefs, quant le Roy amande Sergeants d’Arms, ou autre Ministres pour arrester Nefs al oepe du Roy, et les Seigneurs des Nefs sont venus devant l’Admiral, et alleguent que leurs Nefs nestoient mye arrestees,

tees, ordonne estoit au temps du Roy *Richard le Premier* a *Grimby* per advis de plusieurs Seigneurs du Royalme, que quant Nefs seront arrestees pour service du Roy, que le Roy escripta par les Lettres Patentes a l'Admiral d'arrestar les Nefs plus ou moins a la voulonte du Roy, et selon ce quil a besoin, et l'Admiral escripta au Roy ou au Chancelier d'Angleterre les Noms des Nefs ainsi arrestees assemblement avec les noms des Seigneurs et Maistres d'icelles, et en tel cas le Seigneur de la Nef ne la Maistre ne viendront pas a dire que la Nef nestoit mye arrestee ne a ce ne seront oyz," and that upon such Arrests broken, the Parties might be punished and fined.

Again, *Inquiratur si arrestatus, ad serviendum Regi fregit arrestum, hujusmodi transgressor stat in gratia Regia sive Admiralli sui utrum voluerint committere Carceribus mancipandum vel finem facere, in hac parte si arrestum hujusmodi factum manifestum fuerit cognitum.* De Offic. Admiral. Anglie per Roughton, Artic. 10.

If the *Admiral* by the King's Command arrests any Ships for the King's Service, and he or his Lieutenant return and certify the Arrest, or a List of the Ships arrested into *Chancery*, no Master or Owner of the Ships so arrested shall be received to plead against the Return, "pur ceo que l'Admiral et son Lieutenant sont de Record." The Black Book of the Admiralty, fol. 28, 29. a 157, 158. 15 R. 2. c. 3.

Item, *Inquirendum de omnibus Navibus quæ ad serviendum Domino Regi super mari arrestatæ fuerint, Et postea Domini, possessores, sive Magistri dolo Et fraude à servitio hujusmodi se subtraxerunt in deceptionem Domini Regis, qui si inde postea indictati fuerint, Et convicti super hoc, naves suæ Domino Regi forisfactæ per ordinationem Domini Regis*

Regis Richard Primi, & si Domini, Possessores, vel Magistri hujusmodi inde coram Domino Rege & Cancellario suo per aliquas allegationes se aut naves hujusmodi excusare potuerint, si Admirallus vel locum tenentes sui per Literas suas Patentes de arresto hujusmodi factio fidem fecerint plenioram, Domini, Possessores, aut Magistri predicti nullo modo audiri debent, seu eis fides quovis modo adhiberi, eo quod Admirallus & locum tenentes sui sunt de recordo.

Crooke's Arg. in
Hampden's Case,
fol. 79, to 100.
Vid State Trials
Vol. I.

And if the Ship so arrested break the Arrest, and the Master or Owner thereof be indicted and convicted, *devant l'Admiral*, by the Oath of twelve men, the Ship shall be confiscated to the King, which power the General maintains in all places where he has power, and the same seems to be provided for in the letter Clause of 15 R. 2. Ca. 3.

FINIS